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NANTUCKET, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 1975CV00024

CHRISTOPHER AND LINDA MEREDITH,
JACQUES ZIMICKI, JOAN STOCKMAN,
MARYBETH SPLAINE AND JACK
WEINHOLD, WILLIAM WILLAUER, SEAN
PERRY, MICHELLE AND BRUCE PERRY,
MEGHAN GLOWACKI, SCOTT BOWMAN,
BENJAMIN MOORE, KRISTEN AND DAVID
DUSSAULT, CHARLES E. DAVIS, JR., MARIA
DAVIS, AND GRETCHEN CALLAHAN,

Plaintiffs,

v.

EDWARD S. TOOLE, SUSAN MCCARTHY,
LISA BOTTICELLI, GEOFFREY THAYER, and
JAMES MONDANI as members of the
NANTUCKET ZONING BOARD OF APPEALS,
and SURFSIDE CROSSING, LLC,

Defendants.

COMPLAINT TO ANNUL COMPREHENSIVE PERMIT DECISION
OF THE TOWN OF NANTUCKET ZONING BOARD OF APPEALS
PURSUANT TO M.G.L. c.40B

INTRODUCTION

This is an action pursuant to Massachusetts General Laws Chapter 40A, § 17 for judicial review to annul and reverse the June 13, 2019 decision of the Board of Appeals of the Town of Nantucket (hereinafter the "Board"), granting to defendant Surfside Crossing, LLC ("Applicant") a Comprehensive Permit for an affordable housing project on Nantucket ("Decision").

The Decision is contrary to the law, arbitrary and capricious, based on legally untenable grounds, and based on an unreasonable, whimsical, capricious or arbitrary exercise of judgment

in applying land use regulation to the facts.

Despite its grant of a comprehensive permit, the decision itself ironically and inconsistently details the many fatal flaws of the Applicant's project and the evidence that undermines the Chapter 40B application.

In particular, the Board specifically found in its Decision and the record reflects that:

- The Applicant's submittals and technical information were grossly incomplete and inadequate;
- The Applicant forced the hearings to be closed abruptly following two newly designed proposed submittals, and denied access to the project site for significant environmental inspections;
- The Applicant failed to submit a viable wastewater treatment solution, despite the Island's manifestly infirm municipal sewer infrastructure which recently experienced a catastrophic failure and is under a United States administrative consent order;
- Construction of the project would jeopardize two existing sewer force mains that run directly beneath the site;
- The water supply proposed for the project demonstrably would breach the community's water withdrawal permit and would threaten to deprive Fire officials of a supply sufficient to protect critical facilities – and the plaintiffs' homes – on the same network;
- The project's location (below the chokepoint of the sole vehicular access for residential neighborhoods that back against the ocean) and its congested design would deprive Nantucket Fire Department vehicles and personnel of adequate access both to project structures and properties south of the site, including the plaintiffs' homes;
- The project's location and design present structural and intractable traffic problems

which the existing traffic infrastructure cannot handle;

- The Applicant failed to demonstrate compliance with a slew of applicable MADEP stormwater standards;
- The Board contrary to law waived the requirement to obtain certificates of appropriateness required for new construction in Nantucket, all of which is a historic district; and
- The concentration of affordable housing in the immediate vicinity of the project reflects an invidious and discriminatory desire to "segregate" such housing from the larger community.

Not only is the Decision arbitrary and unreasonable in each of these respects, but it also exceeds the Board's authority. Instead of denying the application consistent with evidence adduced at the hearings and its own findings (or for lack of information), the Board granted a permit for a Board-designed project for which there was no public hearing or vetting by consultants at hearing, whose conditions manifestly cannot be satisfied, and which is predicated on circumstances that do not exist. Confronted with uncontradicted evidence that there is no safe means to dispose of wastewater for the large residential development, the Board conjured a hypothetical and costly expansion of Nantucket's wastewater treatment system that is not approved or funded and which the Board had no authority to decree. Likewise, the Decision disregards uncontradicted testimony that the design of the project as the Applicant ultimately left it would preclude firefighting access to some residential buildings and that there is insufficient water capacity to ensure safe firefighting capability for both the project and the surrounding neighborhoods. Yet, the Board lacked regulatory authority to approve the project in the face of Nantucket's expired water withdrawal permit. Moreover, the Board incorporated a requirement

that the Applicant make a mitigation payment (grossly inadequate to begin with) toward traffic mitigation infrastructure improvements that are not authorized or funded by appropriate municipal boards.

Finally, the Board exceeded its authority and prejudiced plaintiffs' substantial rights because its version of the project was never discussed at public hearing and plaintiffs were deprived of a meaningful opportunity to comment upon that version or the version on which the Board purportedly based its approval.

PARTIES

1. Plaintiffs Christopher and Linda Meredith are natural persons who own the land and improvements and reside at 1 Wherowhero Lane, Nantucket, Massachusetts.
2. Plaintiffs Jacques Zimicki and Joan Stockman are natural persons who own the land and improvements and resides at 13 Wherowhero Lane, Nantucket, Massachusetts.
3. Plaintiff Marybeth Splaine and Jack Weinhold are natural persons who own the land and improvements and reside at 11R South Shore Road, Nantucket, Massachusetts.
4. Plaintiff William Willauer is a natural person and is Trustee of the William Willauer Trust, which owns the land and improvements at 105 Surfside Road, Nantucket, Massachusetts, where Mr. Willauer resides.
5. Plaintiff Sean Perry is a natural person who resides at 14 South Shore Road, Nantucket, Massachusetts.
6. Plaintiff Michele and Bruce Perry are natural persons who own the land and improvements and reside at 14 and 16 S. Shore Road, Nantucket, Massachusetts.
7. Plaintiff Meghan Glowacki is a natural person who resides at 2 Waydale Road, and owns a horse-training business (MPEventing) which she operates at MegSea Stable, 14 and 16

South Shore Road, Nantucket, Massachusetts.

8. Plaintiff Scott Bowman is a natural person who owns the land and improvements and resides at 7 Folger Avenue, Nantucket, Massachusetts.

9. Plaintiff Benjamin Moore is a natural person who owns the land and improvements and resides at 15 Folger Avenue, Nantucket, Massachusetts.

10. Plaintiffs Kristen and David Dussault are natural persons who own the land and improvements and reside at 42 South Shore Road, Nantucket, Massachusetts.

11. Plaintiff Charles E. Davis, Jr. and Maria Davis are natural persons who own the land and improvements and reside at 53 South Shore Road, Nantucket, Massachusetts.

12. Plaintiff Gretchen Callahan is a natural person who owns the land and improvements and resides at Morgans Square, Nantucket, Massachusetts.

13. The defendant individuals are named solely in their official capacities as the members of the Town of Nantucket Zoning Board of Appeals. They each reside in Nantucket, as follows:

Edward S. Toole: 28 Burnell Street, Sconset, MA 02564

Susan McCarthy: 26/28 Goldfinch Drive, Nantucket, MA 02554

Lisa Botticelli: 11 Old South Road, Nantucket, MA 02554

Geoffrey Thayer: 15 Washington Avenue, Nantucket, MA 02554

James Mondani: 9 Appleton Road, Nantucket, MA 02554

Mr. Mondani, who voted against the application, is a named defendant to comply with legal requirements.

14. Defendant Surfside Crossing, LLC ("Applicant" or "Surfside Crossing"), is a limited liability company organized and existing under the laws of the Commonwealth of Massachusetts, and has a principal place of business of: c/o Jamie Feeley and Josh Posner, 37 Old South Road,

Unit #6, Nantucket, MA 02554.

JURISDICTION AND VENUE

15. The Court has jurisdiction over this appeal pursuant to M.G.L. c.40A, § 17 and c.40B, §22, which authorizes judicial review of comprehensive permit decisions in the Land Court or Superior Court.

16. The proposed project is located in Nantucket, the defendant Board is a Nantucket entity, the defendant has a principal place of business in Nantucket, and the plaintiffs are Nantucket residents.

LEGAL STANDING

17. Each of the plaintiffs has legal standing, as he or she is a "person aggrieved" within the meaning of M.G.L. c.40A, sec. 17 and applicable law. As detailed further herein, if the project as approved were constructed, it would harm each plaintiff distinctively and differently - and/or to an extent greater - than the community at large. Plaintiffs will be harmed by impacts that are relevant to the criteria for the Board's consideration of the project application. These impacts include severe risks to the integrity of drinking water sources, including plaintiffs' private wells, due in part to unprotected project construction directly atop existing municipal sewer lines; lack of sewage treatment capacity sufficient for the proposed intensity of use, and resulting vulnerability of the sewer force main along South Shore Road; severely impaired and inadequate fire-fighting capability for the proposed project and the immediately surrounding neighborhoods, due to the magnitude of the project and its complicating impacts on limited road access; untenable emergency access and egress due to overburdening of the single outlet for the project site and the residential community just beyond it; destruction of plant and animal habitat located on some plaintiffs' properties and suspected at the project site; and light and noise

impacts due to plaintiffs' proximity to the project site and the project design.

In addition to sewer, water, traffic, and emergency fire access impacts which would directly impact the plaintiffs' properties, they more specifically would incur the following harms:

- (a) The property of Linda and Chris Meredith, 1 Wherowhero Lane, directly abuts the Site to the south. Two sides of their property abut the Site. These plaintiffs thus would be newly, adversely and specially impacted by headlights, noise and odors emanating from the Site. They also would lose the enjoyment of observing endangered Northern Long-eared Bats that frequent their property and whose habitat at and near the Site the project threatens to disturb or destroy. Their property is on a private well downstream from the Site.
- (b) The property of Jacques Zimicki and Joan Stockman 13 Wherowhero Lane, directly abuts the Site. It thus would be newly, adversely and specially impacted by headlights, noise and odors emanating from the Site. These plaintiffs also would lose the enjoyment of observing endangered Northern Long-eared Bats that frequent their property and whose habitat at and near the Site the project threatens to disturb or destroy. The property is on a private well downstream from the Site. Further, because these plaintiffs operate an event function facility at their property, they would suffer a loss of income because the approved project would render traffic conditions along South Shore Road and the surrounding intersections untenable.
- (c) The property of Marybeth Splaine and Jack Weinhold, 11 South Shore Road, directly abuts the Site to the south. The South Shore Road sewer force main runs through this property, which has a private well downstream of the Site. The property thus is subject to special risk if the approved project overburdens and causes failure of that main. These

plaintiffs also would lose the enjoyment of observing endangered Northern Long-eared Bats that frequent their property and whose habitat at and near the Site the project threatens to disturb or destroy. Because they operate an art gallery from their property, they would suffer a loss of income because the approved project would render traffic conditions along South Shore Road and the surrounding intersections untenable.

- (d) The property of William Willauer, 105 Surfside Road, lies less than 300 feet northeast from the Site's property bound. The property is serviced by a private well, which would be adversely impacted if construction of the project damages the sewer mains that run beneath it or the project overburdens and causes failure of the South Shore Road sewer main.
- (e) The property of Michele and Bruce Perry, 14 and 16 South Shore Road, at which Sean Perry resides and Meghan Glowacki operates her horse training business, lies across the street from and 210 feet south of the Site's property boundary marker. The equine business, which provides training and riding lessons to children and adults, generates income for its owner. The business and property would be severely impacted because (i) the approved project would render traffic conditions along South Shore Road and the surrounding intersections untenable, (ii) horses often startle in response to vehicles, resulting in violations of M.G.L. c.90, § 14, and (iii) horses and their barns are especially vulnerable to fire events, and any delays in emergency fire response caused by unsustainable traffic impacts would place the horses at great risk of harm or death and the barns in jeopardy. The property is serviced by a private well, which would be adversely impacted if construction of the project damages the sewer mains that run beneath it or the project overburdens and causes failure of the South Shore Road sewer main. These

plaintiffs also would lose the enjoyment of observing endangered Northern Long-eared Bats that frequent the property and whose habitat at and near the Site the project threatens to disturb or destroy.

- (f) The property of Scott Bowman, 7 Folger Avenue, houses his carpentry and contracting business, at which he produces materials and from which he delivers them to Nantucket client and construction sites. His property and business therefore are specially at risk by the project's unsustainable impact on traffic along South Shore Road and at the surrounding intersections.
- (g) The property of Benjamin Moore, 15 Folger Avenue, houses his fine carpentry business, at which he produces materials and from which he delivers them to Nantucket client and construction sites. His property and business therefore are specially at risk if the project-related traffic obstructs or impairs the passage of vehicles in the surrounding area.
- (h) The property of Kristen and David Dussault, 42 South Shore Road, houses a horse-boarding facility, which provides income to its owners. The facility and property would be severely impacted because (i) the approved project would render traffic conditions along South Shore Road and the surrounding intersections untenable, (ii) horses often startle in response to vehicles, resulting in violations of M.G.L. c.90, § 14, and (iii) horses and their barns are especially vulnerable to fire events, and any delays in emergency fire response caused by unsustainable traffic impacts would place the horses at great risk of harm or death and the barns in jeopardy. The property is serviced by a private well, which would be adversely impacted if construction of the project damages the sewer mains that run beneath it or the project overburdens and causes failure of the South Shore Road sewer main.

- (i) The property of Charles and Maria Davis, 53 South Shore Road, is especially vulnerable because it is serviced by a private well and the South Shore Road sewer force main runs through this property. The property therefore would be adversely impacted by any failure of the sewage distribution system caused by the project overburdening of that system.
- (j) The property of Gretchen Callahan, at Morgans Square, lies at the tip of a small road at the south end of South Shore Road. This plaintiff would be among the last neighborhood residents to be evacuated in the event of a fire or other emergency and therefore would be especially impacted by the project's unsustainable impact on traffic conditions along South Shore Road and the surrounding intersections and imperiled by resulting delays in access by fire and other emergency services. Her property is serviced by a private well, which would be adversely impacted if construction of the project damages the sewer mains that run beneath it or the project overburdens and causes failure of the South Shore Road sewer main.

RELEVANT FACTS

18. On April 12, 2018, Surfside Crossing applied to the Board for a comprehensive permit pursuant to M.G.L. c.40B, §§ 20-23 to construct a project of 156 dwelling units on a parcel consisting of approximately 13.5 acres within the Limited Use General 2 (LUG-2) Zoning District and Public Wellhead Recharge District of Nantucket ("Site"). The Site is situated at 3, 5, 7 and 9 South Shore Road.

19. The Site thus lies in the Surfside neighborhood of Nantucket, and along the western side of South Shore Road just south of its intersection with Surfside Road. South of the Site, South Shore Road continues toward the south coast of Nantucket where it dead-ends and provides the sole means of vehicular access and egress for some 200 residents, including most of

the plaintiffs. If developed as permitted, the project would overburden and render untenable traffic along South Shore Road and the surrounding intersections, thus dangerously obstructing the flow of traffic between the surrounding residential community and the remainder of Nantucket Island for all purposes, including fire and emergency access.

20. The project application proposed 60 stand-alone single-family residences on fee-simple lots and 96 condominium units in six multi-family buildings, with 25% designated as affordable units, for a total of 389 bedrooms, along with a community building and other amenities.

21. The Board convened a public hearing on May 10, 2018. The hearing continued in several sessions and was closed following agreed continuances, but was later closed abruptly and prematurely at the Applicant's insistence on April 11, 2019.

22. During the hearings, the Applicant floated a potential alternative project involving a 100-unit project, and thereafter a 92-unit project. It did not, however, modify its actual application.

23. On June 13, 2019, by a 4:1 vote, the Board issued a decision ("Decision") granting Surfside Crossing a Comprehensive Permit, with conditions, for a project consisting of a total of 60 dwelling units, containing a maximum of 206 bedrooms. However, the Board stated that the Decision "is based upon the Applicant's 92 dwelling unit plan submission and project plans."

24. The Decision was filed with the Nantucket Town Clerk on June 14, 2019.

25. A certified attested copy of the Decision is attached hereto as Exhibit "A".

26. Despite ultimately granting a permit for a scaled-down project, the Decision contains findings that necessitate denial. It details in numerous ways what it prominently and explicitly terms "The Applicant's Failure to Support the Number of Proposed Units or Otherwise

Address Local Concerns" (underlining supplied). The Board expressly "finds the Applicant's initial submission of a 156-unit development plan was intended as a 'shock and awe' negotiating tactic so that the Board would compromise in its ability to address valid local concerns in exercising its jurisdiction over the project" (underlining supplied). The Board further "declines to credit the Applicant with a good faith effort at 'compromise' when it submitted the 100-unit plan six months into the hearing process" [following "months . . . of fruitless debate"] and finds "that the 100-unit plan did not address the Board's stated site-design concerns in any meaningful way other than to offer a courtyard-style designation of green space . . ."

27. As the Decision notes, the Applicant forced a "premature" closure of the public hearing process, allowing only one hearing session (April 11, 2019) concerning the potential 92-unit project, on which the Board's 60-unit approval ostensibly was based. The Board and the public, including plaintiffs' representatives, thus were unable to meaningfully evaluate that alternative. Indeed, the Decision states that "[t]he Board is still concerned over the intensity of proposed development at the Site, and also has a number of questions and concerns which would have been addressed in further dialogue with the Applicant in a further public hearing session or sessions. The Board has also been urged by opponents to the project to simply deny the application for lack of sufficient information and support of the project." (underlining added)

28. The Decision details how the Applicant and its representatives, during the course of the hearings, failed to address legitimate, substantive local concerns bearing directly on public health, public safety, safe water supply, and environmental protection, among others. Not only from the Board's explanation of them but also in fact, those concerns are not – and cannot be – resolved by scaling down the project.

29. In the form approved by the Board, the project was not the subject of any public

debate or project-specific presentations by the Applicant or others. No opportunity was permitted for such consideration or participation, in contravention of the comprehensive permit process and regulations. Indeed, plaintiffs' legal and technical representatives were relegated to piecemeal comment and the abrupt closure of the hearings severely limited their participation.

COUNT I

(To Annul the Decision Because It Is Arbitrary and Unreasonable)

30. Plaintiffs reiterate and incorporate the allegations of Paragraphs 1 through 29 as if set forth fully herein.

A. Wastewater and Sewage Treatment

31. As the evidence demonstrated, there is no safe means of wastewater disposal of the project as approved. The Applicant proposed no viable solution for wastewater disposal.

32. Nantucket has a history of violating state and federal law (including the Clean Water Act) in the management of its sewers and wastewater. It is the subject of *Findings of Violation and Order for Compliance on Consent* (United States Environmental Protection Agency, Docket No. CWA-AO-R01-FY-16-14) ("ACO"). The ACO found that the Town of Nantucket had discharged untreated sewage from the Collection System to Nantucket Harbor without authorization," received in 2015 a Notice of Noncompliance due to state law violations, and failed in 2016 to undertake repairs in response. The ACO therefore ordered Nantucket to submit a written program manual detailing prospective system operations to minimize the frequency, duration and volume of unauthorized discharges.

33. Despite the ACO, in 2018 a rupture of a sewer line resulted in the escape of 2 to 3 million gallons of raw sewage into Nantucket Harbor and adjacent land.

34. The evidence also established that existing 20-inch and 16-inch municipal sewer

force mains run beneath the project site along an easement held by the Town of Nantucket. They are vulnerable to damage or rupture from the use of heavy equipment for construction of a project at the site. Along with two other sewer force mains that run along South Shore Road, those mains transport raw sewage to the Town's wastewater treatment plant at the end of South Shore Road.

35. As the record further established, and the Decision notes, the existing sewage treatment lines and plant do not have availability or capacity to handle the wastewater needs of the Applicant's project. Specifically, that plant has a permitted capacity of 4 million gallons per day and a safe physical limit of 7 million gallons per day, but currently experiences peak loads of approximately 12 million gallons per day. It thus already is substantially overtaxed.

36. As the Decision finds, "[l]ocal concerns were also presented about private drinking water wells located in the immediate vicinity of the Property (site) and protection of an existing sewer line running beneath the project site. In the event of a rupture of the existing sewer line, the Town's Sewer Department estimates that approximately 30,000 to 60,000 gallons of wastewater would be released before the line could be shut down."

37. The Decision also notes that the Town's consulting sewage engineers reported that the Applicant's sewage plans and proposal failed to provide basic and critical information and to meet established standards for safe treatment. Those experts recommended against connecting any development at the site to the Town's force main in South Shore Road. While the Applicant took issue with that recommendation, it failed to support its position with an adequate design.

38. The Board nonetheless unilaterally posits a new connection by the development to the Surfside treatment plant, presuming that the Town would pay some or all of the costs of such a connection. Yet, that scenario was not vetted at the hearings and is not specifically approved

or funded.

39. The addition of an approved project's wastewater to the existing treatment plant would divert plant capacity from all other properties in the approved needs area that implicates plaintiffs' properties, give priority to the Applicant's project, and leave the system dangerously overextended.

40. Approval of the project therefore was arbitrary and unreasonable.

B. Water Supply

41. The Board approved the project without a viable safe connection to public water.

42. The project site is located within the Water Resource Protection District and Lower Nantucket Wellhead Protection District for the Town's sole source aquifer. Protection of those resources thus is essential to the preservation of sufficient safe drinking water for Nantucket.

43. The Town's safe water yield is established by the Commonwealth of Massachusetts through a regulatory process establishing a water withdrawal permit. The Town's water withdrawal permit expired in February 2015. The Town has continued to operate on that expired permit.

44. As plaintiffs' technical representative explained to the Board, there was insufficient scientific testing, calculation and information to establish that the project's water needs could be safely met from the aquifer.

45. As the Decision notes, the Nantucket Fire Chief reported that the Applicant's project would place overwhelming demands on the existing water infrastructure, critical facilities including hospitals and schools are on the same water main that would service the project, and the Applicant failed to provide hydraulic studies to show that the development would not threaten safety with competing demands.

46. Approval of the project therefore was arbitrary and unreasonable.

C. Traffic

47. The sole vehicular outlet for the project site and the surrounding neighborhoods is South Shore Road. It amounts to a long dead-end road.

48. As the Decision declared, "there already are traffic congestion problems at the intersection which provides the single point of access to the roadway where the development is proposed. The public expressed concern over exacerbation of the poor level of service already provided at the intersection, which the Board finds to have been confirmed by traffic reports and data submitted during the public hearing."

49. There are no municipal plans to implement, at an estimated cost of \$5 million, traffic improvements (including new roundabouts) in the vicinity of the project, even if such improvements could possibly improve capacity at the relevant intersections.

50. The Board's approval of the project, on condition that Applicant make \$200,000 in traffic mitigation payments to the Town (not for the direct benefit of impacted property owners like plaintiffs), would render traffic and access at and near the development untenable and dangerously obstruct access for the surrounding residents. Plaintiffs and their properties would be particularly impacted and imperiled by inadequate emergency services access.

51. Approval of the project therefore was arbitrary and unreasonable.

D. Fire Safety

52. Due to unsustainable demands on the existing water infrastructure and supply, and untenable impacts on the surrounding roads and intersections, development of the project as approved would prevent feasible firefighting access and capacity at the development and at nearby residential properties, including especially the plaintiffs' properties.

53. In addition, as the Decision notes, the Applicant's ultimate project design would not permit fire trucks to reach some of the residential buildings in the development.

54. Approval of the project therefore was arbitrary and unreasonable.

E. Stormwater Compliance

55. Because the project site is located in a recharge area for the Town's existing wells, adequate stormwater controls for the project are essential.

56. The Applicant's plans failed to comply with DEP stormwater regulation requirements. Among other defects, the Applicant's proposed stormwater devices were not designed on the basis of proper percolation and other studies of the site.

57. The Decision's condition that "[a]ll stormwater management plans and calculations shall conform to the requirements of the Massachusetts Department of Environmental Protection (Mass DEP) Stormwater Management Regulations, including the requirements specifically applicable to the Zone II areas" impermissibly left to the future technical testing and analysis that must precede a stormwater system design, which in turn should precede the project building and layout design.

58. The Decision's accommodations in this regard were not supported by the information before the Board and are technically infeasible.

59. Approval of the project therefore was arbitrary and unreasonable.

F. Environmental Harm

60. The Board failed to make a determination concerning the environmental damage associated with the approved project.

61. The site is vacant land that serves as habitat to a variety of plant and animal species. Among other concerns, the site has been designated by the Massachusetts Natural Heritage and

Endangered Species Program (NHESP) as habitat for rare and endangered species pursuant to the Massachusetts Endangered Species Act, M.G.L. c.131, § 23, 321 CMR 10.00.

62. Abutters to the site, including some plaintiffs, have observed and enjoy the presence of threatened, rare, or endangered species and species of special concern in the area of the project site, including the endangered Northern Long-eared Bat.

63. Requests were made, and the plaintiffs' representative urged, that the Applicant permit an environmental inspection of the site. The Applicant refused to permit any such inspection on the basis that the Board had no jurisdiction.

64. Chapter 40B specifically authorizes the Board to consider the environment in evaluating proposals for comprehensive permits.

65. As the Decision notes, "[t]here are also more species habitat issues at the Site and a resulting dispute over the accuracy of the information the Applicant provided to the Natural Heritage Endangered Species Program, which is currently subject to ongoing administrative appeal proceedings involving a determination issued by Natural Heritage based upon the Applicant's submissions."

66. The administrative proceedings and appeal from the NHESP determination do not address all the environmental issues associated with the site or project. Thus, the Administrative Law Judge in that proceeding ruled that the species Blazing Star that is likely to be present at the site is not a species that is subject to that administrative process.

67. The Applicant's refusal to permit inspection of the site for evaluation of all environmental impacts should be deemed an irrefutable admission that environmental wrongdoing or harm has occurred, is occurring, or will occur at the site.

68. The Board acted unreasonably and arbitrarily by permitting the project before the

NHESP proceedings and appeal are concluded, despite the Applicant's refusal to permit environmental inspections, and without making a determination concerning the project's environmental impacts. (As to the former, it is not enough that the Decision prohibits site disturbance until that administrative process concludes; since the outcome of the NHESP process could warrant or require modification of the design of the project even as approved, issuance of a comprehensive permit was premature.)

G. Waiver of HDC Certificates

69. All of Nantucket is a national historic site listed on the National Historic Registry. Massachusetts legislation (Acts of 1970, Chap. 395) requires that every building project on the Island, hence the Applicant's project, meet design standards established by the Nantucket Historic District Commission (HDC).

70. Nonetheless, the Decision waives the requirement that the Applicant obtain "certificates of appropriateness," and no such certificates have been granted to it by the HDC or the Board.

71. This waiver is not authorized by the Historic Districts Act or any other applicable law.

72. Approval of the project therefore was arbitrary and unreasonable.

COUNT II

(To Annul the Decision Because It Exceeds the Board's Authority)

73. Plaintiffs reiterate and incorporate the allegations of Paragraphs 1 through 72 as if set forth fully herein.

74. The Board exceeded its authority by attempting to design a new sewer wastewater treatment connection for a reduced-scale project, and by finding that the Town of Nantucket

would pay for some or all of the cost of such a connection. The Board's action and finding were not supported by any presentation of the Applicant, sufficient technical evidence, or action or vote by any Nantucket board having legal authority with respect to the purported wastewater solution.

75. The Board lacks legal authority to decree a new wastewater connection or the expenditure of public funds to make that possible.

76. In addition, the Board exceeded its authority by approving the project on condition that "MASSDEP approv[e] of the Wannacomet Water Company's requested increase in the capacity of the Town's Water Withdrawal Permit." The Board thereby presumed action by an independent state agency, where such action was neither imminent nor assured.

77. The Board lacks legal authority to predict or compel such action on the part of DEP.

78. Further, the Board exceeded its legal authority by approving the project on condition that the Applicant make traffic mitigation payments of \$200,000. That amount is grossly out of proportion to the actual need and cost of improvements to that infrastructure, which in any event could not prevent the project at the proposed location from endangering existing nearby residents and their properties and users of the affected roads.

79. More fundamentally, the Board has no legal authority to predict or decree the improvement of municipal roadways or to expend municipal funds for that purpose.

80. The Board also exceeded its authority by approving the project without making a determination concerning the project's environmental impacts.

81. Finally, the Board exceeded its authority by waiving HDC certificates of appropriateness.

COUNT III

(To Annul the Decision Because It Deprives Plaintiffs of Due Process and Substantial Rights of Participation)

82. Plaintiffs reiterate and incorporate the allegations of Paragraphs 1 through 81 as if set forth fully herein.

83. The Board approved the project without permitting plaintiffs any opportunity to comment or offer evidence concerning the approved version, and without a meaningful opportunity to participate in the comprehensive permit proceedings regarding the Board-designed project approved by the Board.

84. It was incumbent on the Board to deny the project because the Applicant insisted that it abruptly close the public hearings following the 92-unit proposal.

85. Instead of denying the project on substantive grounds or due to a lack of relevant information, the Board posited and approved a project that was never the subject of public process.

86. The Board thus abrogated the substantial rights of the plaintiffs and their rights to due process, given the impacts that even the approved project would have on them and their existing properties.

COUNT IV

(To Annul the Decision Because It Condones Discriminatory and Invidious Segregation Contrary to Constitutional Principles)

87. Plaintiffs reiterate and incorporate the allegations of Paragraphs 1 through 86 as if set forth fully herein.

88. At the public hearing, when asked why the project's condominium units designated for sale to low-income people were physically separate from its single-family, higher-priced

houses, and why there was "a barrier" in the form of a large recreational building and associated facilities between those units and the higher-priced homes, the Applicant explained that that layout was intended "to segregate" the former group from the latter.

89. As the Decision notes, Nantucket's affordable housing inventory overall is concentrated in the area of the Applicant's project site: "The Board also notes that the project is directly contiguous to two other Chapter 40B developments and that almost all of Nantucket's SHI-qualified affordable housing is located within a half mile radius of the project Site. The Board finds this to be contrary to the goal of diversifying the location of affordable housing in other available development sites throughout town. It is also worth noting that the project, as proposed, is proposed at a far greater degree of units and bedrooms per acre than that of other recently approved 40B projects on Nantucket."

90. In light of an objection by plaintiffs' counsel about segregation, the Board attempted to lessen the segregation of low-income people within the project site. Nonetheless, by permitting a Chapter 40B project at this location, the Board further facilitated the segregation of affordable housing and of the population it serves within a single area of the Island.

91. To lessen segregation of peoples, the Board had no rational choice but to deny the project.

COUNT V

(G.L. c. 40A §17 – Award of Costs to Plaintiffs)

92. Plaintiffs reiterate and incorporate the allegations of Paragraphs 1 through 91 as if set forth fully herein.

93. G.L. c. 40A §17 provides in part that: "Costs shall not be allowed against the board or special permit granting authority unless it shall appear to the court that the board or

special permit granting authority in making the decision appealed from acted with gross negligence, in bad faith or with malice. "

94. The Board has acted with gross negligence, in bad faith or with malice. The Decision is blatantly self-contradictory, expressly notes the egregious deficiencies of the Applicant's presentation and information, acknowledges the countervailing evidence and urgings of the plaintiffs' and others to deny the permit application, approves a project that the Board recognizes was not subjected to public review, and exceeds the Board's legal authority in several respects.

95. The Board thus acted with deliberate disregard for the evidence before it, the requisites of the comprehensive permit process, and applicable legal standards.

96. Accordingly, plaintiffs should be awarded attorney fees and costs in this action.

PRAYERS FOR RELIEF

WHEREFORE, the plaintiffs hereby request that this Honorable Court:

- A. Determine and adjudge that the Nantucket Zoning Board of Appeals' Comprehensive Permit Decision was unreasonable, arbitrary, and erroneous as a matter of law and fact, and that the Board exceeded its authority;
- B. Annul the Decision and declare it void as a matter of law;
- C. Grant such other relief to plaintiffs as this Court deems just and appropriate; and
- D. Award attorney fees and costs in favor of the plaintiffs, against the Town of Nantucket Zoning Board of Appeals, as allowed by M.G.L. c. 40A, §17.

Respectfully submitted,

CHRISTOPHER AND LINDA MEREDITH,
JACQUES ZIMICKI, JOAN STOCKMAN,
MARYBETH SPLAINE AND JACK
WEINHOLD, WILLIAM WILLAUER, SEAN
PERRY, MICHELE AND BRUCE PERRY,
MEGHAN GLOWACKI, SCOTT BOWMAN,
BENJAMIN MOORE, KRISTEN AND DAVID
DUSSAULT, CHARLES E. DAVIS, JR., MARIA
DAVIS, AND GRETCHEN CALLAHAN,

By their attorneys,



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Dated: June 28, 2019



NANTUCKET
TOWN CLERK

2019 JUN 14 PM 3:29

**TOWN OF NANTUCKET
BOARD OF APPEALS
NANTUCKET, MASSACHUSETTS 02554**

ATTEST: A TRUE COPY

Nancy Z. Holmes
NANTUCKET TOWN CLERK

Date: June 14, 2019

To: Parties in Interest and Others concerned with the Decision of
The BOARD OF APPEALS in the Application of the following:

COMPREHENSIVE PERMIT Application No.: 020-18

Owner / Applicant: SURFSIDE CROSSING, LLC

PROJECT NAME: SURFSIDE CROSSING

Property Description: 3, 5, 7, and 9 South Shore Road
Lots 4, 3, 2, and 1 on Plan Book 25, Page 50
Map 67, Parcels 336, 336.9, 336.8, & 336.7

Enclosed is the Decision of the BOARD OF APPEALS which has this
day been filed with the office of the Nantucket Town Clerk.

An Appeal from this Decision may be taken pursuant to Sections 21
and 22 of Chapter 40B, Massachusetts General Laws.

Any action appealing the Decision must be brought by filing a
complaint in Nantucket Superior Court or Land Court or the Housing
Appeals Committee, as appropriate, within TWENTY (20) days after
this day's date. Notice of the action must be given as provided
for under Chapter 40B, Sections 21 & 22.

Eleanor W. Antonietti
Eleanor W. Antonietti,
Zoning Administrator

NANTUCKET
TOWN CLERK

TOWN OF NANTUCKET, MASSACHUSETTS
ZONING BOARD OF APPEALS
FILE NO. 20-18

2019 JUN 14 PM 3:29

DECISION ON APPLICATION FOR COMPREHENSIVE PERMIT

APPLICANT: SURFSIDE CROSSING, LLC

DECISION DATE: June 13, 2019

I. PROCEDURAL HISTORY

On April 12, 2018, Surfside Crossing, LLC ("Applicant") applied for a comprehensive permit under G.L. c.40B, §§20-23 to construct one hundred fifty-six (156) dwelling units on an approximately 13.5 acre parcel ("Locus" or "Site") located within the Limited Use General 2 (LUG-2) Zoning District of the Town of Nantucket, and also within the Public Wellhead Recharge District. The Locus is situated at 3, 5, 7 and 9 South Shore Road and is shown on Assessor's Map 67 as Parcels 336, 336.9, 336.8, and 336.7 and is shown as Lots 4, 3, 2, and 1 on Plan Book 25, Page 50 recorded at the Nantucket Registry of Deeds. Evidence of the owner's title is recorded in Book 1612, Page 62 at the Nantucket Registry of Deeds.

The application was submitted in reliance on a Project Eligibility Letter issued by MassHousing on April 12, 2018 and is entitled "Surfside Crossing". The project described in the Project Eligibility Letter consisted of 156 for sale dwelling units comprised of 60 stand-alone single-family residences on fee simple lots and 96 condominium units in six multi-family buildings, with 25% (39 units consisting of 15 single family residences and 24 condominium units) designated as affordable units, with a total of 389 bedrooms. The existing lots were proposed to be subdivided into 60 fee simple lots, four open space lots, and a 3.6 acre condominium lot. Off-street parking was proposed to consist of two spaces per single family residence and 148 spaces designated for the condominiums. The public hearing on the application was opened by the Zoning Board of Appeals ("Board") on May 10, 2018 and closed, first following agreed upon continuances, but then at the Applicant's insistence, and despite the Board's stated reservations, on April 11, 2019.

During the course of the public hearing, the Applicant modified the proposal to a 100-unit project. Thereafter, following design review workshop meetings in February, 2019, the Applicant further modified the proposal to consist of 92 for-sale dwelling units comprised of 44 stand alone single family residences on fee simple lots, 40 multi-family condominium units in a mix of 8-unit and 4-unit buildings, and 8 units located in four duplex buildings, with 25% (23 units consisting of 11 single-family residences, 10 condominium units, and 2 duplex units) designated as affordable units.

The decision that follows ("Decision") is based upon the Applicant's 92 dwelling unit plan submission and project plans ("Comprehensive Permit Plans") identified as "Surfside Crossing, A Proposed 40B Development in Nantucket, Massachusetts, prepared for Surfside Crossing, LLC, by Bracken Engineering, Inc., No. 3, 5, 7 and 9 South Shore Road, Map 67,

Parcels 336, 336.7, 336.8 and 336.9," dated April 10, 2019, consisting of two (2) sheets, titled: "Lotting Plan" and "Overall Site Development Plan," three (3) sheets, titled "Landscape Plan," "Enlarged Landscape Plans," and "Landscape Notes" for Surfside Crossing prepared by Weinmayr/Jay Associates, Inc., Landscape Architects, Conceptual Landscape Plans, three (3) sheets, prepared by Ahern, LLC, and Architectural Plans, prepared by Design Associates, Inc. dated April 11, 2019, as conditioned by the Board during deliberations on May 28, 2019 and June 7, 2019. Reduced sized copies of the Comprehensive Permit Plans are attached as Appendix A to this Decision.

II. RECORD ASSEMBLED BEFORE ZONING BOARD OF APPEALS

The materials identified in attached Appendix B have been assembled and submitted during the public hearings in this matter. All of the materials listed in Appendix B are incorporated herein by reference.

III. GOVERNING LAW

In hearing and deciding this application under G.L. c.40B, §21, the Board has "the same power to issue permits or approvals as any local board or official who would otherwise act with respect to such application, including but not limited to the power to attach to said permit or approval conditions and requirements with respect to height, site plan, size or shape, or building materials as are consistent with the terms of [the statute]. The Board is also mindful of the fact that the Applicant has the right to challenge conditions or requirements which render a proposed project "uneconomic," defined in G.L. c.40B, §20 as "any condition brought about by any single factor or combination of factors to the extent that it makes it impossible for ... a limited dividend organization to proceed and still realize a reasonable return ..." The term "reasonable return" is defined in the Massachusetts Comprehensive Permit Regulations as requiring "that profit to the Developer is not more than 20% and not less than 15% of the total development costs." See 760 CMR §52.02.

The Board may impose requirements and regulations which are "consistent with local needs," defined, in G.L. c.40B, §20, as follows:

requirements and regulations shall be considered consistent with local needs if they are reasonable in view of the regional need for low and moderate income housing considered with the number of low income persons in the city or town affected and the need to protect the health or safety of the occupants of the proposed housing or of the residents of the city or town, to promote better site and building design in relation to the surroundings, or to preserve open spaces, and if such requirements and regulations are applied as equally as possible to both subsidized and unsubsidized housing.

See G.L. c.40B, §20. See also, 760 CMR 56.02, defining matters of "Local Concern," as:

the need to protect the health or safety of the occupants of a proposed Project or of the residents of the municipality, to protect the natural environment, to promote

better site and building design in relation to the surroundings and municipal and regional planning, or to preserve Open Spaces.

IV. STATEMENT OF RELEVANT MATERIAL FACTS AND FINDINGS

A. The Town's Efforts to Create Affordable Housing

The Board finds that the Town of Nantucket has shown a demonstrated commitment to meeting its affordable and workforce housing needs as evidenced by public and elected official support for significant efforts over the past several years.

At the Nantucket Special Town Meeting in 2015, by over two-thirds majority, the voters enacted a Workforce Housing Zoning Bylaw which allowed for bonus density if 25% of the units were restricted to renters with household incomes of 80% Area Median Income ("AMI") or less (in the case of an ownership project, 75% of the 25% restricted units must serve households at 80% AMI or less, and 25% of the 25% may serve up to 175% AMI). Richmond Development Group, a private developer, is developing a 225-rental unit and 91-homeownership unit project under this Town-supported zoning. Richmond has received Special Permit approval for the development from the Nantucket Planning Board, as well as Historic District Commission approval under the Nantucket Historic District Commission Act for the design of its initial apartment buildings. Building permits have been issued for the first 20 apartments being built in the rental portion of the development.

Earlier that same year, the voters at the Nantucket Annual Town Meeting unanimously voted authorization to the Select Board to use a Town-owned property at Fairgrounds Road for the creation of affordable housing. Pursuant to the Town Meeting vote, in 2017, the Select Board issued a Request for Proposals and awarded a bid to HallKeen Management for the development of 64 rental units at that site ("Ticcoma Green") which will serve an array of AMI levels (e.g., 30%, 60%, and 120%) with 80% of the units in the development income-restricted.

The Nantucket Planning Board granted a Special Permit for the Ticcoma Green Development in December 2017. (Despite strong community support from year-round and seasonal residents alike, the project was held up in court by three private individuals. The Land Court recently ruled in favor of the Town and the developer, but the 2018 appeal unfortunately precluded the Town from seeking Safe Harbor protection based upon the requisite progress toward its approved Housing Production Plan which the approved units could have provided).

The Nantucket voters also unanimously supported a "Housing Bank Home Rule Petition" (a 0.5% transfer fee on RE transactions over \$2,000,000 – in the model of the Nantucket Land Bank legislation – which would provide a reliable funding stream for the Town's Affordable Housing Trust) at the last three Annual Town Meetings, 2017, 2018, and 2019.

In furtherance of its commitment to affordable housing, the Town hired a full-time housing consultant in 2015 and created a full-time Housing Specialist position within the Town structure in July 2017, with a stated goal of meeting the Town's affordable and workforce

housing needs and continued progress toward achieving the 10% subsidized housing requirement under Chapter 40B.

At the 2019 Annual Town Meeting, the voters approved a \$20 million funding authorization for the creation of affordable rental housing on various sites throughout the island which would count on the Town's Subsidized Housing Inventory. This funding was approved on the required ballot vote in the Town's annual election in April, 2019. Additionally, at the 2019 Annual Town Meeting, the voters approved the Town's Community Preservation Committee's annual grant of \$750,000 to the Town's Affordable Housing Trust, and approved bond funding up to \$5 million to the Affordable Housing Trust. This additional funding is under the Community Preservation Act and did not require a further ballot vote.

B. The Applicant's Failure to Support the Number of Proposed Units or Otherwise Address Local Concerns

The Board finds the Applicant's initial submission of a 156-unit development plan was intended as a "shock and awe" negotiating tactic so that the Board would compromise in its ability to address valid local concerns in exercising its jurisdiction over the project. The 156-unit plan grossly overcrowded and overburdened the Locus and was out of character with the existing abutting properties and surrounding areas. Unfortunately, this opening salvo resulted in hundreds of residents appearing at the hearing to oppose the project, to the point where an initial hearing session had to be discontinued so that future hearing sessions could be held in the Town's High School Auditorium, which was the only public space where the crowds of residents opposing the project could be accommodated. Even then, more than 800 residents came in opposition to the project, causing an overflow to standing room only in the Auditorium.

The Applicant then "compromised" to a 100-unit plan, submitted on October 25, 2018, having wasted the first several months of hearing sessions on fruitless debate over the initial plan. The Board declines to credit the Applicant with a good faith effort at "compromise" when it submitted the 100-unit plan six months into the public hearing process. The Board also finds that the 100-unit plan did not address the Board's stated site-design concerns in any meaningful way other than to offer a courtyard-style designation of green space within the development.

The Board also notes that the project is directly contiguous to two other Chapter 40B developments and that almost all of Nantucket's SHI-qualified affordable housing is located within a half mile radius of the project Site. The Board finds this to be contrary to the goal of diversifying the location of affordable housing in other available development sites throughout town. It is also worth noting that the project, as proposed, is proposed at a far greater degree of units and bedrooms per acre than that of other recently approved 40B projects on Nantucket. By way of comparison, the Rugged Scott 40B Development is 40 units on 10 acres or 4 units per acre, and 140 bedrooms or 14 bedrooms per acre. The Sachem's Path 40B development is 40 units on 9.12 acres or 4.5 units per acre and 93 bedrooms or 10 bedrooms per acre. The 92 unit Surfside Crossing plan, as proposed, is 92 units on 13.5 acres, or 6.81 units per acre, respectively 51% greater than Sachem's Path and 70% greater than Rugged Scott, and it is 282 bedrooms on 13.5 acres or 20.89 bedrooms per acre, respectively 105% greater than Sachem's Path and 49% greater than Rugged Scott.

The Site is situated on the west side of South Shore Road to the south side of Surfside Road and near the intersection of South Shore Road, Surfside Road and Fairgrounds Road. All of these roadways have both vehicular and pedestrian/bicycle lanes. There is only a single access/egress point to South Shore Road, and it is essentially a long dead end roadway. There are traffic congestion problems at the intersection which provides the single point of access to the roadway where the development is proposed. The public expressed concern over exacerbation of the poor level of service already provided at the intersection, which the Board finds to have been confirmed by traffic reports and data submitted during the public hearing.

The Locus is also located in the Water Resource Protection District (MassDEP Zone II) and the Lower Nantucket Wellhead Protection District (MassDEP Zone II), for the Town's sole-source aquifer. Local concerns were presented during the public hearing over the need to protect local and municipal drinking water supplies. The Board finds that the project must be carefully conditioned so as to protect municipal drinking water supplies, including but not limited to compliance with Zoning Bylaw §139.12B for the Public Wellhead Recharge District, and further conditions stated below.

Local concerns were also presented about private drinking water wells located in the immediate vicinity of the Property and protection of an existing sewer line running beneath the project site. In the event of a rupture of the existing sewer line, the Town's Sewer Department estimates that approximately 30,000 to 60,000 gallons of wastewater would be released before the line could be shut down.

There are also rare species habitat issues at the Site and a resulting dispute over the accuracy of the information the Applicant provided to the Natural Heritage Endangered Species Program, is currently subject to ongoing administrative appeal proceedings involving a determination issued by Natural Heritage based upon the Applicant's submissions.

After submission of the 100-unit plan, the Board continued to express concern over the overcrowding of the 13.5 acre development site, with inadequate open space, buffer zones, or areas for common life-style amenities, and also expressed concern over the livability of the units fully or partially located in the lower level (basements) of the multifamily buildings and the inconsistency between the size and scale of the development and the existing surroundings, and the further strain such a massive development would have upon existing traffic problems at the single access/egress point to the sole roadway providing access to the Locus. The Board was repeatedly informed during the public hearing sessions that the number of units, particularly those proposed for the large 8-unit buildings to be included in the development, was driven by the Applicant's stated desire to provide housing to "middle-income" year-round residents of Nantucket, who did not otherwise qualify for affordable housing as restricted under G.L. c.40B. The Applicant stated that they intended to offer a number of Studio, 1 Bedroom, 2 Bedroom, and 3 Bedroom condominium units to sell in the range of \$450,000 to \$750,000, and that this was a price range which the Applicant believed would be affordable to "year-round Islanders" who do not otherwise satisfy the household income and asset limitations for the Chapter 40B affordable housing.

However, the Board found that the intended "mid-range" price point of housing to be included in the development was not a sufficient justification for overcrowding and overburdening the Site and otherwise adversely affecting local concerns. The Applicant did not contend that the elimination or reduction in the number of units it intended to offer to "middle-income" residents would render the building or operation of the housing "uneconomic" as required under the above-referenced Chapter 40B law and the Board found that the Applicant failed to support the proposed number of units under the legal standards applicable to Chapter 40B projects.

In January, 2019, the Applicant agreed to design workshop meetings in an effort to explore whether a more suitable site plan could be developed to meet the Applicant and the Board's stated concerns. Design workshop meetings conducted on February 4 and 22, 2019 resulted in a 92-unit plan which the Board found to be more favorable toward a more suitable site design than the 100-unit plan. However, before the Board was able to work with the Applicant to discuss and properly condition the revised 92-unit plan, the Applicant's counsel inexplicably requested at a public hearing session on March 26, 2019 that the hearing be closed, and that the Board vote on the 100-unit plan previously submitted on October 25, 2018. On March 29, 2019, new counsel for the Applicant agreed to extend the deadline for closing the public hearing to April 11, 2019, and agreed that the Applicant would submit updated information and an engineered site plan so that the Board would have an opportunity to consider and condition the 92-unit plan which was still largely in only concept form following the February, 2019 design workshop meetings.

The Applicant agreed to submit updated information in support of the 92-unit plan, but then allowed the Board only one public hearing session to consider it, on April 11, 2019. The Board has done its best to consider and act on the plan despite being deprived of a reasonable amount of time to solicit further input on the plan while the public hearing was still open.

The Board is still concerned over the intensity of proposed development at the Site, and also has a number of questions and concerns which would have been better addressed in further dialogue with the Applicant in a further public hearing session or sessions. The Board has also been urged by opponents to the project to simply deny the application for lack of sufficient information and support for the project.

Additional issues which remained inadequately addressed as the result of the premature closing of the public hearing on the 92-unit plan, include issues raised by the Fire Department. There is no secondary access to the proposed condominium buildings and the Fire Department has noted that it would have difficulty positioning multiple emergency vehicles in the event of an emergency. The rear elevations of all but one condominium building are inaccessible to fire apparatus. Parking lot spaces that are perpendicular to the travel lanes must be 22 feet in length to avoid overhanging vehicles into the roadway. In the plans submitted, parking lengths are not shown. There is no defined clear access for emergency services to the condominium buildings. Emergency personnel would have to work between parked cars to access the majority of the condominium units, as proposed.

The Fire Department has noted that the proposed development places an overwhelming responsibility on the Fire Department if an emergency were to arise. The potential fire load of this empty multifamily building would require 5200 gallons of water a minute to extinguish, which the Fire Chief determined to be an impossible mark to meet from the start. The potential impact on other facilities must also be determined. Many fire protection systems at critical facilities such as hospital and schools are in place on the same water main, and the Applicant failed to provide hydraulic studies to show that the development would not unduly threaten safety with competing demands.

The Board also found, based upon the concern noted by the Town's sewer engineering consultants, Weston and Sampson, that the Applicant's sewer plans and proposals were inadequate and did not meet local concerns.

The following information and design components are missing from the Applicant's sewer plans:

The plans do not include information on the proposed wastewater flows for the development;

The revised plans do not show sewer services to the buildings;

The revised plans for the multi-family parcel do not have sewer profiles;

The revised plans do not include specifications for materials, construction requirements and testing requirements related to the sewer system;

The revised plans do not show methods to protect the Town's existing 20-inch and 16-inch sewer force mains that cross through the proposed development. The design needs to provide methods to ensure protection of the sewer force mains during construction as there will be multiple utility crossings installed above and below the force mains. In addition, there is concern for traffic loading over the force mains during the construction of the overall development. The design needs to provide methods to protect the force mains from the heavy equipment that will be driving back and forth over the sewer force mains during construction;

The revised plans show a sewer force main connection to the Town's existing 12-inch force main in South Shore Road. The Town's engineering consultants recommend against connecting the Seaside Crossing Development to this force main. The 12-inch force main currently pumps flow from the South Valley Pump Station and will soon include flow from the new Monomoy South Pump Station being built as part of the Nantucket Harbor Shimmo project. Based on evaluation of the force main hydraulics during the design of the Monomoy South Pump Station, there is concern that additional flow to this force main could have an adverse impact on the operations of the existing pump stations;

In a March 7, 2019 letter to the Board, the Applicant appears to dispute this recommendation, but provided no information as to why. The Applicant did not provide an evaluation of the force main hydraulics to show that their proposed alternative will not have

adverse impacts on the operations of the existing pump stations. The Applicant's engineer suggested that they could install controls and an oversized wetwell to limit when their proposed pump station will operate. However, no information was submitted on this design, including an evaluation as to what happens if the controls fail or are manually overridden. Weston and Sampson's concerns with this type of system were discussed in their January 25, 2019 letter to the Town. The Town's existing pump stations do not operate in the manner suggested by the Applicant's engineer;

The revised plans do not provide information on the size of the proposed force main, nor do they provide any detail as to the connection to the existing force main; and

The revised plans do not include any design information for the pump station. A generic pump station detail was all that was provided. As discussed in Weston and Sampson's initial Peer Review letter, dated August 17, 2018, any wastewater pump stations need to be designed to the Town's latest standards. Copies of sample plans and key components/requirements for pump stations were sent to the Applicant's engineer in September 2018, with no meaningful response.

Based on the future needs areas and the sewer system extensions recommended in the Town's 2014 Comprehensive Wastewater Management Plan (CWMP), the installation of a gravity sewer along South Shore Road with a new pump station installed at the Surfside Wastewater Treatment Facility ("WWTF") is the preferred alternative for the Town. This option would be consistent with the ongoing sewer master planning approach to serving the wastewater needs of the area. A new gravity sewer along South Shore Road could serve the Miacomet Needs Area as well as the properties along South Shore Road and would avoid impacting the operations of the existing pump stations and the Town's force main system. This option could also allow for the diversion of flow from the three existing pump stations along South Shore Road which currently pump flow to the Surfside Road Pump Station. This diversion of flow would allow for additional capacity at the Surfside Road Pump Station. The Town would pay its reasonable share of the cost of the recommended sewer infrastructure, but the Applicant refused to consider it, claiming only that it was "too expensive."

Wastewater is currently pumped to the Surfside WWTF via the Sea St Pump Station, the Surfside Road Pump Station, the South Valley Pump Station and the new Monomoy South Pump Station. There are 3 force mains (20-inch, 16-inch and 12-inch) that convey flow to the Surfside WWTF. The three force mains manifold together at the WWTF prior to the headworks. As such, the operation of each of the pump stations impacts the force main system hydraulics. Due to hydraulic capacity limitations and structural pipe condition concerns, Weston and Sampson recommended against connecting additional pump stations to these force mains.

The 16-inch force main failed during the winter of 2018, causing a nearly catastrophic release of wastewater into the environment, including Nantucket Harbor. While the breaks have been repaired, there are concerns with the structural condition of the remainder of the pipe. The 16-inch force main is not in operation and will only be used in an emergency, per the recommendation of Environmental Partners Group, the Town's consultant for the force main evaluation. Flow from the Sea St Pump Station and the Surfside Rd Pump Station are pumped through the 20-inch force main. Due to the age and configuration of the 20-inch pipe, there is concern for the structural condition of this pipe as well. The planned inspection was put on hold due to the failure of the 16-

inch force main and the need to keep the 20-inch force main in service. The Sewer Department is currently looking at replacing the 16-inch force main followed by an inspection and rehabilitation of the 20-inch force main. During the repair of the 16-inch force main, a break at the force main manifold at the WWTF occurred. Due to the age and location, there is concern for the structural condition of the force main manifold, as well as the force main pipe from the manifold to the WWTF headworks. These pipe segments will be evaluated along with the 20-inch force main.

Flow from the South Valley Pump Station and the Monomoy South Pump Station are pumped through the 12-inch force main. As discussed above and based on evaluation of the force main hydraulics during the design of the Monomoy South Pump Station, there is concern that additional flow to this force main could have an adverse impact on the operations of the existing pump stations.

The Board recognizes that it cannot place the burden of fixing aging or inadequate public infrastructure upon the Applicant. However, the Board finds that the Town's consulting engineers and Sewer Director have presented a feasible alternative to service the project with the preferred gravity line sewer option and, as noted in Condition 63 herein, the Town would pay its reasonable allocation of the cost of construction of the preferred infrastructure so that the Applicant is not unfairly burdened with the cost of the preferred option.

There have also been questions and concerns, left unanswered, over the status of MassDEP's action on the Town's local water department, Wannacomet Water Department's requested increase in the capacity of its water withdrawal permit as to ensure sufficient capacity to service a development of this size as proposed. The Town is currently approved for an average 1.68 million gallons per day, and is seeking an increase to allow up to 1.9 million gallons per day. The Wannacomet Water Company is operating, with MassDEP's consent, under an expired water permit pending MassDEP's decision on the requested increase. The Board finds that this issue would need to be resolved so that a grant of water withdrawal rights to the Applicant would not cause capacity overburdening problems or otherwise place the Town in an enforcement situation with MassDEP.

Based upon the foregoing general overview and findings during the public hearing, the Board reaches this Decision in an effort to approve a project with conditions consistent with local needs.

V. REQUESTED WAIVERS AND EXEMPTIONS

1. Massachusetts General Laws Chapter 40B, Sections 20-23 empower the Zoning Board of Appeals to grant waivers from local rules and regulations, where the waivers would not threaten public health, safety or welfare. The Board understands that reasonable waivers from valid local regulations should be granted if, but for the waiver, the development of the housing project would be "uneconomic," as that term is used in G.L. c.40B, §§20-23.
2. The Board believes that, under existing law and regulation, the Applicant has an affirmative obligation to demonstrate the need for the requested waivers to avoid the proposed project becoming "uneconomic."

3. The Applicant provided the Board with an amended list of requested waivers and exemptions sought from local rules, regulations and bylaws as identified in the amended waiver requests for the 92-unit plan dated April 9, 2019. The waiver requests were without any substantive explanation for the need for each waiver and no "uneconomic" justification was provided by the Applicant within the waiver requests or at any time during the public hearing process. The Applicant insisted upon the close of the public hearing on April 11, 2019, and provided only a cursory overview of the waivers requested at the final public hearing session by one of its attorneys. This is in express violation of Section 5.04 of the Board's Comprehensive Permit Rules and Regulations which provides that it is the Applicant's "burden to demonstrate that the waiver of any particular local regulation, by-law or ordinance is necessary in order to maintain the project's economic viability" and which further provides that there "shall be a presumption that the waiver of the local by-law, ordinance or regulation will adversely affect local concerns."
4. Although the Applicant has not provided information to demonstrate the project would be rendered uneconomic but for these specifically requested waivers and exemptions, the Board has reviewed the waiver requests and has granted those that are consistent with protection of the general health, safety or welfare.
5. The Board has denied requests that do not appear necessary to construct the project. The Board finds, in the absence of any substantiation to the contrary, that the waivers not granted do not either alone or in the aggregate render the project uneconomic.
6. The Board's decision as to each of the waivers and exemptions specified in the requests identified in the amended waiver requests, dated April 9, 2019, is set forth in Appendix C attached hereto and incorporated by reference.
7. In the event that the Applicant or the Board determines that the final design of the project necessitates further waivers, the Applicant shall submit a written request for such waivers to the Board and the Board may grant or deny such additional waivers in accordance with applicable rules and regulations and the judgment of the Board.
8. To the extent the Comprehensive Permit Plans referenced in Section I show a design detail which reflect or appear to require a waiver from any local regulation, by-law or ordinance, and such waiver is not expressly granted in this Decision and in Appendix C, this Decision and Appendix C shall supersede the Comprehensive Permit Plans. The Applicant must comply with any local rule, regulation, code or charter provision, by-law, special legislation, or ordinance in effect at the time of the submission of its application unless expressly waived in this Decision or in Appendix C.

VI. GRANT OF PERMIT AND CONDITIONS THERETO

Subject to the conditions set forth hereinafter, and in keeping with sound planning goals and objectives of the Town of Nantucket, the Board grants this comprehensive permit ("Permit") to the Applicant for construction of sixty (60) ownership dwelling units, with a maximum total bedroom count of two-hundred and six (206). The unit count is 5.33 units per acre and the bedroom count is 15.26 bedrooms per acre. Both numbers are higher than the two most recent 40B approvals but the Board recognizes affordable housing needs and determines that the unit and bedroom counts meet sound planning objectives in relation to the goals and objectives of G.L. c.40B. The housing development is referred to herein as the "Project." If the dimensional requirements set forth in Conditions Nos. 13-15 below would enable construction of a higher number of units or bedrooms, the maximum number permitted by this Decision shall remain at sixty (60) units and two-hundred and six (206) bedrooms and shall in no event exceed these maximum numbers.

Without the written consent of the Board, this Permit is non-transferrable and non-assignable.

The Board notes that 760 CMR 56.05(8)(d) provides that:

"The Board shall not issue any order or impose any condition that would cause the building or operation of the Project to be Uneconomic ..."

In reaching this Decision, the Board has endeavored to ensure that the conditions herein do not render the Project uneconomic and that the conditions are consistent with local needs.

The conditions of the Permit are as follows:

ELIGIBILITY

1. 760 CMR 56.04(1)(a) requires that the Applicant "shall be" a "Limited Dividend Organization." Accordingly, the Board requires as a condition of this Decision that the Applicant execute the Regulatory Agreement required by this Decision prior to issuance of a building permit.

2. The Applicant has provided a Project Eligibility Letter from MassHousing dated April 12, 2018.

3. With respect to compliance with the site control requirements of 760 CMR 56.04(1)(c), this Decision relies upon the findings and representations upon which the Project Eligibility Letter is based.

GENERAL CONDITIONS

4. The comprehensive permit application was based on a Project Eligibility Letter issued to the Applicant on April 12, 2018 by MassHousing. This Permit is conditioned upon

receipt of Final Approval from MassHousing, including the grant of subsidy funding through the New England Fund or MassHousing program of MassHousing funding programs. Evidence of Final Approval is a condition precedent to any grading, land disturbance, construction of any structure or infrastructure, or issuance of any building permit.

5. The terms, provisions and conditions of this Permit shall burden and benefit the authorized successors and assigns of the Town and the Applicant with the same effect as if mentioned in each instance where the Town or the Applicant is named or referenced.

6. This Permit is granted to the Applicant and may not be transferred or assigned to any party without the approval of the Subsidizing Agency and notice to the Board, as required by 760 CMR 56.05(12)(b), except to an Applicant-controlled affiliate.

7. Each condition in this Decision shall run with the land and shall, in accordance with its terms, be applicable to and binding on the Applicant and the Applicant's successors and assigns for as long as the Project and the use of the land does not strictly and fully conform to the requirements of the Nantucket Zoning Bylaw; and reference to this Comprehensive Permit Decision shall be incorporated in every deed conveying all or a portion of the Property.

8. The Applicant and MassHousing shall execute a Regulatory Agreement prior to any grading, land disturbance, construction of any structure or infrastructure, or issuance of any building permit.

9. The Decision is based on, and this Permit is issued based on, the real property identified on the Comprehensive Permit Plans, described below ("Locus" or "Site").

10. Except as otherwise specified in this Decision, the Project must substantially conform to the Comprehensive Permit Plans referenced in Section I, as conditioned by the Board. To the extent any details in the Comprehensive Permit Plans are inconsistent with the terms and conditions of this Permit or Appendix C, this Permit and Appendix C shall supersede the inconsistency.

11. If, between the date that this Decision is filed with the Office of the Town Clerk and the completion of the Project, the Applicant desires to change any details of the Project (as set forth in the Comprehensive Permit Plans, or as required by the terms of this Decision), the Applicant shall promptly inform the Board in writing of the change requested. Changes will be administered or addressed pursuant to 760 CMR 56.05(11).

12. Except as otherwise specifically provided herein, where this Decision provides for the submission of plans or other documents to the Board, the Board or its designee shall review and provide a written response as to whether such plans or other documents are consistent with this Decision within ninety (90) days of the Board's receipt of such plans or other documents.

SITE SPECIFIC CONDITIONS

13. SINGLE FAMILY BUILDING REQUIREMENTS -

- A. Minimum Lot Size = 5,000 square feet for 3 and 4 Bedroom Units;
- B. Minimum Lot Size = 6,250 square feet for 5 Bedroom Units;
- C. Minimum Frontage = 50 feet for all Single Family Dwelling Lots, Except for Lot 41;
- D. Setbacks = 10 feet in front yard, 5 feet on one side yard and 10 feet on the other side yard, and 5 feet in rear yard;
- E. Parking = minimum of 2 on-lot spaces for 3-4 Bedroom Lots and minimum of 3 on-lot spaces for 5 Bedroom Lots;
- F. No spas or pools on any lots: -
 - i. the proposed spas impermissibly distinguished market rate from affordable units, since spas were proposed for only the market rate units;
 - ii. the proposed spas would create a noise and privacy issue between units given the limited depth of the setbacks and limited lot area sizes.
- G. No AC or Mechanical Units may be located on street/front elevation or visible from the street;
- H. All Single-Family Dwellings shall have exterior stairway basement access;
- I. Maximum Number of Single Family Dwellings = Forty (40);
- J. Maximum Number of Five (5) Bedroom Units shall be four (4), including at least one affordable unit; and
- K. Height/Exterior Architectural Design shall be as conditioned on the Board's notes on the architectural plans contained within the Comprehensive Permit Plans, Appendix A.

14. MULTI-FAMILY UNITS BUILDING REQUIREMENTS-

- A. No Eight-Plex Buildings Permitted;
- B. Duplex Buildings
 - i. Minimum Lot Size = 7,500 square feet;
 - ii. Minimum Frontage = 70 feet;

- iii. Setbacks = 10 feet front yard, 10 feet side yard and 10 feet rear yard;
- iv. Parking = 6 on-lot spaces per duplex building lot;
- v. No living space in basements;
- vi. No AC or Mechanical Units located on street/front elevation or visible from the street; and
- vii. Maximum number of duplex buildings = Six (6) (total of 12 units).

C. Fourplex Buildings

- i. Minimum Lot Size = 10,000 square feet, with each building on its own lot;
- ii. Minimum Lot Frontage = 100 feet;
- iii. Setbacks = 10 feet front yard, 20 feet side yard, 20 feet rear yard;
- iv. Parking = 7 on-lot spaces on each Fourplex lot;
- v. No units located entirely in basements (lower level);
- vi. No AC or Mechanical Units located on street/front elevation or visible from street; and
- vii. Maximum number of Fourplex buildings = Two (2).

- D. Height/Exterior Architectural Design -- as conditioned on the Board's notes on the architectural plans contained within the Comprehensive Permit Plans, Appendix A.

15. RECREATIONAL BUILDING REQUIREMENTS

- A. Maximum Ground Coverage = 1,000 square feet;
- B. Maximum Interior Space = 2,800 square feet: 1,000 on ground and basement levels, and up to 800 feet more allowed on second floor to reach maximum 2,800 square feet; the additional land area resulting from the reduction in the footprint of the Recreation Building shall be devoted to green space or outdoor passive recreation;
- C. No commercial kitchen/catering facilities;
- D. For exclusive use of residents and guests, no outside rentals;
- E. 8 parking spaces;
- F. Minimum Lot Square Footage of 38,196 square feet; Height/Exterior Architectural Design subject to final review and approval by the Board prior to issuance of a building permit; and
- G. Height/Exterior Architectural Design subject to final review and approval by the Board prior to issuance of a building permit.

16. POOL REQUIREMENTS--

- A. No spa permitted;
- B. Dimensions No greater than 20 feet by 48 feet as proposed by Applicant;
- C. Hours of Operation = 8 a.m. to dusk;
- D. For exclusive use of residents and guests; and
- E. Homeowners' Association and Condominium Association, as applicable, to handle internal governance issues not otherwise covered in this Permit.

17. LANDSCAPING/HARDSCAPING REQUIREMENTS

- A. 143 Street Trees as proposed by Applicant and shown on Landscape Plan L-1 in the Comprehensive Permit Plans;
- B. Must comply with Zoning Bylaw as to required tree caliper size;
- C. Native/Non-invasive plants only, per list compiled on "Landscaping with Native Plants on Nantucket" by the Nantucket Biodiversity Initiative and Nantucket Conservation Foundation;
- D. Walkways for Multi-Family and Single-Family Dwelling Units must match; all walkways shall consist of bluestone;
- E. Driveways must be native stone (gravel), must comply with Zoning Bylaw section 139-20.1(B)(2)(b), and aprons shall be same surface as roadway;
- F. Roadway, Sidewalks, and Curbing - either native stone chip seal finish on both sidewalk and roadway or asphalt roadway and brick sidewalk. All curbing to be vertical granite curbing.

18. OPEN SPACE REQUIREMENTS --

Limited to private exclusive use of residents and guests. The amount of green space as shown on the Comprehensive Permit Plans, as further conditioned in this Permit, shall not be reduced.

19. LIGHTING REQUIREMENTS --

- A. Street Poles prohibited; pathway lighting and bollards are an allowed alternative;

- B. Must comply with Town Code Chapter 102 – Dark Skies.

20. **BUFFER ZONES REQUIREMENTS –**

- A. No disturbance buffer of 25 feet along site perimeter and expanded to 50-feet along South Shore Road, augmented as necessary per list of approved plantings;
- B. Split rail fence to delineate entirety of all buffer zones prior to commencement of construction.
- C. Applicant shall exercise care not to impact the intent of the “no disturb” buffer area’s purpose of protecting adjacent residences from visual and noise impacts by excessively trimming trees or trampling low-lying shrubs and brush. The Board reserves the right to require additional screening, including but not limited to the planting of new trees and/or shrubs if presented with evidence the above conditions have been violated.
- D. The “no-disturb” buffer area lots shall be considered permanently protected open space consistent with G.L. c.40A, §9.
- E. Based upon the information presented, the Board determines that an adequate buffer standard should be at least one (1) tree per ten (10) linear feet of the “no disturb” buffer area perimeter, said trees being a minimum height of five (5) feet and minimum caliper of three (3) inches. Planting should occur within or at the edges of the “no disturb” buffer areas as directed by the Board or its designee. Trees shall be planted in a natural pattern, shall be offset where appropriate and are meant to supplement existing, mature vegetation. This condition shall be incorporated into the final landscaping plan required by this Decision. The Board reserves the right to alter any aspect of this standard and vary tree sizes and locations based upon a review of the detailed final landscape plan.
- F. The Applicant shall stake the proposed locations for these required trees for review with the goal being to maximize the screening between the Site and abutting properties. The final landscaping plan and a schedule for the planting of all required trees submitted for review by the Board shall identify species of conifers that would meet the above goal and be suitable for planting in the “no disturb” buffer areas to the satisfaction of the Board or its designee. The Board reserves the right to alter any aspect of this procedure and specify alternative tree types and species based upon a review of the detailed final landscape plan.
- G. The Applicant shall be responsible for maintaining the health of these trees until the sale of the 44th lot. Thereafter, the Homeowner’s Association shall maintain the trees of the “no disturb” buffer area,

including the replacement of unhealthy, diseased or dead trees. This condition shall be included in the Homeowner's Association documents.

H. The Board reserves the right to require additional planting in the event that care in preserving existing vegetation of the "no disturb" buffer area is not undertaken by the Applicant until the completion of the project.

21. **PARKING/ROADWAY ACCESS REQUIREMENTS -**

Minimum of one (1) additional on-street parking space per dwelling unit;

22. **MAINTENANCE BUILDING REQUIREMENTS**

Approved as to height/exterior architectural design on the conditions noted on the architectural plans within the Comprehensive Permit Plans, Appendix A.

23. All units must have gutters, which must be maintained in accordance with an approved maintenance plan, and all roof water drainage must be directed to subsurface drainage systems independent of the roadway system as proposed and agreed to by the Applicant.

24. There shall be no additional parking or expansion of parking areas beyond parking areas shown on the Comprehensive Permit Plans as conditioned herein. Notice of this restriction must be included in the Homeowners Association Documents and Condominium documents.

25. No conversions of non-livable space, e.g., attics, to livable space after completion of construction of units as approved herein. No expansion of building envelope.

26. No customary home occupations shall be allowed in light of the overburdening issues already posed by the density of this Project in relation to existing traffic congestion.

27. There shall be no parking of campers, trailers, boats, storage trailers or storage units, temporary garage structures or shelters, panel trucks, recreational vehicles, commercial vehicles (unless the commercial vehicle is the unit owner's personal vehicle), or unregistered vehicles on Project property.

28. No changes in the Homeowners' Association and/or Condominium Trust rules which affect conditions of the Permit shall be permitted. Any future proposed changes to exterior architectural features shall be subject to the jurisdiction of the Nantucket Historic District Commission.

29. Snow removal provisions shall be subject to review and approval by the Nantucket Fire Department. No dumping in buffer zones. In the event designated snow storage areas are inadequate for a particular storm event or events, excess snow must be removed from the Property.

30. Trash barrels must be stored out of view. No exterior air conditioning units or other mechanical equipment shall be located within lot setbacks areas.
31. All affordable units must have central air conditioning if market rate units have central air conditioning. Applicant has stated on the record that all units will have central air conditioning.
32. Ground coverage for each lot shall not change from that depicted on the Comprehensive Permit Plans as revised per the conditions set forth herein.
33. All local requirements concerning roadway construction shall apply.
34. The lighting plan for the Project must meet local requirements for exterior lighting.
35. Roadway right of ways shall be a minimum of 40 feet wide. Suitable access for emergency access vehicles, snow storage, landscaping without impacting clear sight lines and on street parking as applicable must be provided. Final plans must be submitted by a Transportation Engineer for compliance with Institute of Transportation Engineers (ITE) standards for circulation within the site and at access/egress locations.
36. All stormwater management plans and calculations shall conform to the requirements of the Massachusetts Department of Environmental Protection (MassDEP) Stormwater Management Regulations, including the requirements specifically applicable to the Zone II areas.
37. All utilities must be installed underground.
38. No impervious areas except those indicated on the Comprehensive Permit Plans, as further conditioned in this Permit, are allowed on the lots.
39. No construction or site disturbance is allowed prior to the receipt of any approvals required by applicable Massachusetts Environmental Policy Act (MEPA) regulations.
40. Soil testing, consistent with MassDEP Stormwater Handbook requirements, at all proposed stormwater infiltration systems, shall be completed and submitted for review and approval by the Board or its designee.
41. Final Construction Plans shall be provided for review and approval by the Board or its designee providing all data required under the Town's local Subdivision Regulations.
42. Applicant shall allow and provide necessary funding for inspection of construction consistent with Subdivision Regulations and other Town requirements not waived in this Decision.

43. Applicant shall complete for the review and approval by the Board or its designee a comprehensive Sediment and Erosion Control plan consistent with EPA SWPPP requirements and the DEP Stormwater Handbook.

44. Applicant shall comply with all applicable requirements of the Americans with Disabilities Act (ADA) and the regulations of the Massachusetts Architectural Access Board (AAB).

45. Final Construction Plans and supporting calculations must be provided for final review and approval by the Board or its designee. The final design shall comply with MassDEP Stormwater Management Regulations as described in the MassDEP Stormwater Regulations and associated Stormwater Handbook.

46. The EPA SWPPP template shall be used to demonstrate compliance with MassDEP requirements with respect to erosion/sedimentation control during all phased construction activities in order to protect abutters and the Town roadway. Tracking pads shall be a minimum of 50 feet long. Sizing data for temporary basins, etc. must all be provided.

47. An Operations & Maintenance ("O&M") Plan shall be provided for review and approval by the Board or its designee prior to the start of any construction activities or related site disturbance, including an O&M Plan for the individual lot systems and a final stand-alone O&M plan including a plan with the location of all BMP's, manufacturer's requirements, etc.

48. A signed illicit discharge statement shall be submitted to the Board prior to any occupancy permits.

ADDITIONAL CONDITIONS CONCERNING FIRE PROTECTION AND RELATED SAFETY CONCERNS

49. Access roads must be 20 feet in width not including any areas designated for parking (527 CMR18.2.3.4.1.1),

- a. No on street parking allowed shall be allowed if such parking would narrow the roadway width to less than 20 feet on two way sections;
- b. No on street parking on one-way sections where the roadway width will be reduced below 13 feet;
- c. For roadways on the Comprehensive Permit Plans showing widths of 20 feet for one-way sections, parking on one side of the roadway will be allowed with posted and enforced No Parking signs in these sections;
- d. A section of roadway that is two-way and 22 feet and must be posted and enforced with No Parking signs;
- e. Modeling must be submitted for the Fire Chief's review and approval to assure the fire departments apparatus can access development;
- f. Two of the roads have no provisions for turning around. (527 CMR 18.2.3.4.4) "Dead-end access roads in excess of 150 feet in length shall be provided with approved provisions for fire apparatus to turn around."

50. Trees and vegetation must be maintained and not allowed to grow to block access for emergency vehicles. This would include vertical growth of tree. (527 CMR 18.2.3.4.1.2)

- a. All roadways shall have a vertical clearance of not less than 13 feet 6 inches;
- b. Vegetation must not reduce the road width below the dimensions required in above section.

51. Final Fire Department access plans must be submitted to the department for review and approval (527 CMR 18.1.3.1).

52. Hydrant lay out needs to be reviewed and approved by the Fire Chief and installed before construction of any dwelling units; plans for fire protection must also be reviewed and approved by the Fire Chief for the time period between any initial site disturbance and completion of construction. Any proposed phasing of hydrant installation is subject to approval by the Fire Chief.

53. Applicant must complete a hydraulic study for review and approval by the Fire Chief addressing impact of Project on water capacity necessary for fire protection on other critical infrastructure located on the same water main.

ADDITIONAL CONDITIONS CONCERNING PUBLIC SEWER

54. The wastewater collection system for the proposed development shall not be connected to the Town's existing force mains.

55. The wastewater collection system for the proposed development shall include the Town's preferred option of a new gravity sewer along South Shore Road, from the proposed development to the Surfside WWTF. This option shall relocate the proposed wastewater pump station from the proposed development to the Surfside WWTF.

56. The deficiencies in the revised plans discussed in Section IV.A. above, shall be addressed to the satisfaction of the Nantucket Sewer Department.

57. The wastewater collection system for the proposed development shall be constructed in accordance with the Nantucket Sewer Department Design Standards and Specifications in place at the time of construction. The final design plans shall be submitted to the Nantucket Sewer Department for review and approval to ensure conformance with the Design Standards and Specifications.

58. Given that the 2014 CWMP identified the sewer needs areas in Town, that these flows were used to determine the capacity of the Surfside WWTF, which is currently being upgraded, and that while the proposed development properties are part of the service area to the WWTF, the density of the proposed development creates much higher wastewater flows than the current zoning would allow, and given that the additional flow from the proposed development would be taking up planned capacity at the WWTF, the Board denies waivers of sewer related fees and requires that all properties in the proposed development be subject to the appropriate sewer fees outlined in the Nantucket Sewer Department Rules and Regulations in place at the time of

construction. These fees include, but are not limited to, sewer connection fees, sewer user fees and sewer capacity fees. All local rules and regulations concerning sewer connection fees, permit fees, sewer privilege fees or charges, sewer extension fees, and service fees shall apply to the project permitted by this Decision.

59. The Applicant must also comply with the Sewer Application and Permit requirements of the Nantucket Sewer Department and the Nantucket Sewer Permit Checklist and Sewer As-Built Checklist, subject to review and approval by the Sewer Director.

60. The Applicant shall submit stamped record drawings of the wastewater collection system. Record drawings shall also be provided in the latest version of AutoCad.

61. The Applicant shall submit copies of the Operations & Maintenance Manual for the pump station, as well as an electronic copy on a CD or portable drive.

62. The Applicant shall establish and provide a copy of the legal entity's (e.g. Homeowner's Association and Condominium Trust) documents to ensure proper operation and maintenance of the proposed wastewater collection system and other common infrastructure on private property.

63. The sewer infrastructure shall be constructed by the Applicant in accordance with the preferred option presented by Weston and Sampson, with the Town to contribute an agreed allocated cost of construction proportionate to the degree to which the infrastructure confers a public benefit independent of servicing the project approved by this Decision.

64. The sewer system must be submitted for inspection, review and approval by the Sewer Director pre and post-construction, and will be conveyed to the Town following payment of the agreed allocated cost of construction as conditioned above.

ADDITIONAL CONDITIONS CONCERNING PUBLIC WATER CONNECTION

65. Subject to the additional conditions below, the Board approves the proposed connection to Town water conditioned upon the Applicant's compliance with all rules, regulations and requirements of the Nantucket Board of Water Commissioners, and the Wannacomet Water Company and Director, including but not limited to review and approval of the design and construction of the proposed water mains and final inspection, testing, and chlorination of the water mains prior to public water being turned on to service the development and prior to water being turned on to service residential units.

66. All local fees and charges for the initial construction and connection of the water mains, and any initial or continuing service or other fees or charges once the system has come on-line, shall apply to the Applicant and the development approved by this Decision.

67. The water connection is also conditioned upon and subject to MassDEP approval of the Wannacomet Water Company's requested increase in the capacity of the Town's Water Withdrawal Permit to an initial increase to 1.9 million gallons per day.

68. Applicant shall provide water conserving appliances (dishwasher, washing machines, toilet, shower heads, etc.) for all appliances to be included in the residential housing units offered at the project, as well as appliances serving any other amenities offered at the development (facilities offered at pool or in recreational building, etc.), subject to review and approval by the Wannacomet Water Director.

69. Applicant shall implement Low Impact Development Design concepts for managing stormwater and shall fund an independent Environmental Monitor during construction phases to document activities and ensure the protection of groundwater quality and private and public drinking water supplies located in the project area.

70. Applicant shall construct a stormwater system to provide treatment and dispersed infiltration from roadways, and which shall capture and retain the first inch of stormwater and parking areas and use vegetated swales and bioretention basins with overflows to the maximum extent possible, rather than use of a stormceptor-type design with direct infiltration.

71. Applicant shall provide a Site Maintenance and Integrated Pest Management Plan for review and approval by the Board or its designee and shall ensure that the Homeowners' Association and Condominium Trust documents for the development require the use of organic and/or non-toxic fertilizers and pesticides, as well as use of certified applicators. The Homeowners' Association and Condominium Trust documents must also require regular maintenance of storm drains, including filing a maintenance plan and actual maintenance with the town annually.

72. Applicant has stated, and the Board imposes a condition, that landscape irrigation shall be provided by private well and not the public water supply. Applicant shall take all necessary steps to protect against adverse effects upon the capacity of other private drinking water wells in the area.

COMPLIANCE WITH STATE AND FEDERAL REQUIREMENTS

73. Development of the Project shall comply in all respects with the conditions contained in the Project Eligibility Letter approval for the project issued by MassHousing on April 12, 2018.

74. The Project, and all construction, dwelling units, utilities, roads, drainage, earth removal or relocation of structures and all related appurtenances with respect to the Project, shall comply with all applicable state and federal regulations. The Applicant shall promptly provide the Board with copies of all permitting requests and other correspondence directed to any applicable state or federal agency and of all correspondence, approvals or disapprovals received from any such agency.

75. The Project shall comply with all rules, regulations, filing and permit requirements and certifications required by the regulations governing the Massachusetts Endangered Species Act, G.L. c.131, §23, 321 CMR 10.00. No site disturbance shall be

permitted pursuant to this Decision until the Nantucket Land Council's currently pending administrative appeal of the NHESP determination for the Site is fully and finally resolved, including exhaustion of court appeals.

76. The Project shall comply with all rules, regulations, permit and filing requirements, and certifications of the Department of Environmental Protection with respect to stormwater disposal, resource protection, water supply and low impact development management practices.

77. The Project shall comply with the rules and regulations of, filing and permit requirements and certifications required by the regulations governing the Massachusetts Historical Commission.

78. Copies of all approvals from state and federal agencies shall be submitted to the Board prior to recording of final plans.

LOCAL REQUIREMENTS

79. Except as expressly waived by this Decision, the development of this Project, including the construction of all dwelling units, utilities, roads, drainage structures and other appurtenances, shall comply with all local requirements and regulations as defined in 760 CMR 56.02, including any and all related fees and charges.

80. Except as specifically waived by this Decision, the Project shall comply, in all respects, with any and all rules, regulations, filing and permit requirements of the Nantucket Sewer Commission and Wannacomet Water Department concerning public sewer and water servicing the Project, including any and all related fees and charges. No fees shall be waived.

81. The Applicant shall also comply with any and all filing requirements for issuance of a building permit, including any and all related fees or charges. No fees shall be waived.

82. To the extent the Project requires the conveyance of any interest in Town-owned land, the Board notes that it lacks jurisdiction to grant such an interest. To the extent Town Meeting approval is required for any aspect of the Project, the Town's right to require Town Meeting approval as a prerequisite to such aspect of the Project is expressly reserved. Nothing in this Decision shall be construed as a grant of approval of any interest in property owned or held by the Town or County of Nantucket.

83. The total number of dwelling units permitted for this Project shall not exceed sixty (60) units and the total number of bedrooms shall not exceed two hundred and six (206) bedrooms.

AFFORDABLE UNITS

84. The affordable units shall be evenly distributed within the Locus and shall be indistinguishable in architectural style, exterior finish materials, and exterior appearance from

market rate units. If interior finishes differ between market and affordable units, the quality of the interior finishes of the affordable units must be of reasonable quality. As part of the Building Permit application, the Applicant must provide for review and approval by the Board or its designee specifications/information on any proposed finishes and equipment (including but not limited to floor treatments, cabinets/vanities, countertops, lighting, kitchen appliances, and bathroom fixtures) in the affordable units that differ from finishes and equipment proposed for the market units. There shall also be a proportionate share of housing types (single family, duplex, and fourplex) allocated between affordable and market rate units; 25% of each unit type offered shall be affordable, e.g., if five-bedroom units are offered, 25% of the total number of five bedroom units shall be affordable units.

85. An affordable housing restriction, enforceable by the Town of Nantucket, requiring that the affordable units remain affordable in perpetuity or for as long as the project does not comply with local requirements, whichever is longer, and in a form approved by the Board, shall be recorded senior to any liens on the Project Locus to protect the requirement for the affordable units in the event of any foreclosure, bankruptcy, refinancing or sale. All affordable units shall be subject to the Universal Deed Rider as required by MassHousing. The sale and re-sale of all affordable units shall comply with all MassHousing and Chapter 40B requirements, including, if applicable, any income, asset, and first time homebuyer requirements.

86. Upon the sale of an affordable dwelling, the Applicant or its successors or assigns shall provide written notice to the buyer that the premises are subject to an affordable housing restriction and subject to the terms and provisions of the affordable housing restriction and that any amendment purporting to alter, amend or delete the restriction shall be void and of no effect.

87. The deeds to the Affordable Units shall include the standard MassHousing Affordable Housing Restriction/Deed Rider in which the affordability restrictions described herein survive foreclosure.

88. For every three (3) Market Rate units for which a Certificate of Occupancy is issued, there shall be at least one (1) Affordable Unit for which a Certificate of Occupancy is issued. The Applicant has the right but not the obligation to accelerate the rate of construction of the Affordable Units.

MANAGEMENT DOCUMENTS

89. The Applicant shall prepare documents in a form that conforms to this Decision and applicable law designed to manage the Project and ensure that the terms and conditions of this Decision are enforced.

90. The management documents shall provide that the Town or County of Nantucket shall not have any legal or financial responsibility for, operation or maintenance of, roadways, driveways, parking areas, stormwater management systems, snowplowing, landscaping, trash disposal or pickup, street lighting or other illumination, or other roadway infrastructure within the Project or the Locus.

PROFITABILITY

91. The Project shall be limited to the profit allowed under the Regulatory Agreement ("Allowable Profit").

92. Any profit that is above the Allowable Profit pursuant to the Regulatory Agreement shall be returned to the Town of Nantucket for use by the Town for the purpose of efforts toward affordable housing. The profit limitation may be enforced by the Town or its agencies, boards or commissions at any time.

93. The Applicant shall provide the Board with a copy of all financial documentation, including Cost Certification submissions, required by the Regulatory Agreement.

MARKETING/LOCAL PREFERENCE

94. There shall be a local preference plan established for the sale of the affordable units.

95. Insofar as allowed under G.L. c. 40B and any other applicable laws and by the Subsidizing Agency, with respect to at least 70% of the Affordable Units, the Applicant shall provide a preference category in the Lottery for the Affordable Units for current Nantucket residents, Nantucket municipal employees, employees of local Nantucket businesses, and households with children attending Nantucket schools. The Board acknowledges that it will be required to provide evidence satisfactory to the Subsidizing Agency of the need for the foregoing local preferences and obtain approval of the categories of persons qualifying for the same, in accordance with Chapter 40B requirements. In no event shall the Applicant be in violation of the terms of this Comprehensive Permit to the extent the Subsidizing Agency disapproves the local preference requirement or any aspect thereof. The Applicant shall provide reasonable and timely assistance to the Town in providing this evidence. If the Board or its designee does not provide such information within thirty (30) days of a written request by the Applicant, its Lottery Agent, or the Subsidizing Agency, then this condition shall be void unless the Applicant has failed to provide reasonable and timely assistance as described above.

96. MassHousing shall approve the Lottery Packet and the Applicant's Affirmative Fair Housing Marketing Plan (AFHMP) as part of its Final Approval review. A copy of the proposed Lottery Plan and AFHMP shall be submitted to the Board simultaneously with its submission to MassHousing. The Applicant shall also submit to the Board the assumptions and calculations upon which the pricing of the Affordable Units is based. All costs associated with the lottery and marketing plans, including the advertising and processing for the Affordable Units, shall be borne by the Applicant. Buyers of Affordable Units must satisfy all applicable Chapter 40B requirements, including all applicable income, asset, and First Time Homebuyer requirements.

CONDITIONS PRECEDENT TO COMMENCEMENT OF PROJECT

97. The conditions below are conditions precedent to site disturbance. In particular, and without limitation, no grading, land disturbance, or construction of any structure or infrastructure shall commence until:

a. **Final Review**—Prior to commencement of any construction and granting of any permits for the Project, the Applicant has submitted detailed construction drawings to the Board to ensure that said drawings are consistent with this Permit, with local requirements not waived in the permit, and with state and federal codes and requirements of state and federal agencies and their respective decisions. Copies of the detailed, approved construction drawings ("Final Plans") shall also be filed in hard copy (twenty full-scale sets) and in digital format with the Board and the Building Department for recordkeeping purposes. The Applicant must secure Board approval prior to construction and allow the Board ninety (90) days to review the detailed construction drawings. The final plans shall include a building code review.

b. The Applicant has posted with the Town Clerk a bond or surety in the amount needed to complete the ways, utilities, drainage, shade trees in the right of way, and as-built plans for the Project as approved, plus a 50% margin of error plus an appropriate rate of inflation over a 5-year period. The performance bond or surety shall contain the following provision: "If the principal shall fully and satisfactorily observe and perform in accordance with the qualifications and time schedule set forth herein as specified in all the covenants, agreements, terms and provisions as set forth in the decision of the Board in this matter, as attached hereto, then this obligation shall be void, otherwise it shall remain in full force and effect, and, in the absence of completion of the above work, the aforesaid sum shall be paid to the Town of Nantucket in order to complete the construction in accordance with the plans and specifications."

c. The Final Plans, including phasing plans, way and underground utilities plans (water system, stormwater system, gas, telephone, electric and cable systems), entrance/intersection street lights and signs have been reviewed and have received approval consistent with this Decision by the Board, and consistent with their respective jurisdictions by any and all relevant federal and state agencies, departments, boards, or commissions for matters not otherwise approved or waived by this Decision.

d. The Applicant and MassHousing have executed a Monitoring Agreement, similar in form to the Monitoring Agreement published by MassHousing but revised in content as required for consistency with this Decision.

e. A Regulatory Agreement, similar in form to that published by MassHousing, has been executed by the Applicant and MassHousing and has been recorded with this Decision. The Regulatory Agreement shall contain, at a minimum, the following terms: 1) 25% of the units shall remain affordable in perpetuity or for as long as the project does not comply with local requirements, whichever is longer. Such units shall be sold to households whose annual income, adjusted for household size, does not

exceed 80% of the applicable Area Median Income for Nantucket as defined by HUD. 2) pricing of the affordable units shall be in accordance with MassHousing and Chapter 40B requirements; 3) Affordable units shall be sold in accordance with the MassHousing approved Affirmative Fair Housing Marketing Plan ("AFMP"); and 4) Identification of the location of all Affordable Units shall be included.

f. A NPDES Stormwater Pollution Prevention Plan, Erosion Control Plan and Stormwater Management Systems Operations and Maintenance Plan has been approved in accordance with applicable state and federal regulations.

g. Final and detailed landscape improvements and plans prepared by a Landscape Architect registered in the Commonwealth of Massachusetts to the detail required for use as on-site construction and planting drawings and/or to obtain a building permit in accordance with the State Building Code, whichever requirement is more detailed, have been submitted to the Board and all other relevant public agencies for review and approval, including acknowledgement of consistency with this Decision. Such plans shall include shade trees along roadways, and shall specify the types, number, size and location of all proposed landscape plants, trees and shrubs at the time of planting, the location and type of fence or other screening materials, plans and profiles of all planting and screening materials and details of any and all other proposed landscape materials. Such plans indicate the specific types of active/passive recreational equipment to be installed within the open space and recreational areas located on the approved plans. Such plans shall also indicate the location of mailboxes, dumpsters and other appurtenant structures to be located within or integral to, the project.

h. Identification of all areas of the site proposed for vegetative clearing.

i. A detailed plan showing landscape improvements, open area, limit of construction activity, edge of clearing, sedimentation and erosion controls, a soil stockpiling area, and construction staging, refueling and storage area(s), for verification that such plan conforms with this Decision. Tree protection measures shall be stated with details for tree wells around existing trees to be protected included in the plan set. The removal of trees, shrubs, and natural groundcover on the site shall be minimized to preserve the natural environment to the highest degree possible. All trees over 8 inches in caliper within the limits of work shall be flagged prior to tree clearing. A representative or agent of the Board shall have the opportunity to identify trees that need to be protected and preserved during construction.

j. An infrastructure operations and maintenance plan has been submitted for review and approval by the Board, with any updates as required. The plan shall include, at a minimum, maintenance during and post construction as well as perpetual maintenance and monitoring of the roadway, roadway infrastructure and drainage systems (routine and seasonal). The operations and maintenance plan shall bind the Applicant. The stormwater operation and maintenance plan include specific tasks and timelines associated with inspection and maintenance of all proposed stormwater management structural and non-structural measures, a repair and replacement plan for the

system with estimated costs as well as identify the owner and party responsible for inspection, operation, maintenance, repair, and replacement including certification of acceptance of legal responsibility for the aforementioned.

k. A construction schedule identifying the sequence and approximate dates of all key stages of construction has been submitted to and approved by the Board or its designee. This submission also will include: (i) identification of all contractors, field engineers, construction managers, surveyors, wetland and biology specialists, and other professionals that will be involved in the implementation of the project; (ii) staking driveways, dwelling foundations, parking areas, drainage basins and other drainage structures, and well locations; (iii) placement of sediment and erosion controls and limit of construction fencing; (iv) identification and approval of significant trees to be cut on the site; (v) removal of vegetation and topsoil; (vi) drainage system construction; (vii) major stages of roadway construction; (viii) excavating dates for building foundations; (ix) sewer and water line installation; and (x) inspection dates.

l. The Applicant has provided to the Town of Nantucket, in form and substance approved by Town Counsel, Applicant's agreement that the Town of Nantucket shall be free of any liability for any act, omission or negligence caused by the Applicant, its employees, agents, subcontractors, beneficiaries or trustees who have relation to this Project, and that Applicant on behalf of itself and its successors and assigns has consented and agreed to indemnify the Town, its employees and officials for any harm, damage or injury caused by the Applicant, its employees, agents, subcontractors, beneficiaries or trustees with regard to this Project, and proof of insurance adequate to cover all risks reasonably foreseeable in relation to the construction of the Project, which must be maintained until completion of all phases of construction.

m. The Applicant has granted to the Town easements giving the Town the right to enter the Locus to repair and maintain water and sewer lines, as applicable and as necessary to ensure the health and safety of the residents therein. The easements shall be shown on a site plan provided to the Board and shall be recorded by the Applicant.

n. Cuts and fills have been designed to preserve the existing land elevations to the extent reasonably possible based on the final plans as approved, and the use of retaining walls is optimized to preserve existing vegetation wherever practicable.

o. The final plan has addressed constructability with regard to infrastructure drainage due to settlement in substantial fill areas.

p. All zoning lines have been identified on the final plan for reference purposes.

q. The interior roadway layout and parking areas have been approved by the Fire Chief, to facilitate emergency access and increase fire safety.

- r. Easements have been provided on the final plan to facilitate utility installation and slope maintenance outside the rights of way.
- s. The final plans indicate that roadway construction materials and thicknesses conform to a 2 1/2" binder and 1 1/2" surface course.
- t. The final plans shall include limitations on lawn areas.
- u. The final site plan submission shall include an acceptable snow management plan.
- v. The final plans have been reviewed and accepted by the Fire Chief and the Wannacomet Water Department for hydrant and valve locations; hydrant locations shall provide a 10-foot minimum separation from storm drains or other approved means of protecting the water supply from the storm drains.
- w. The Applicant has obtained all necessary private utility permits and final designs including but not limited to gas pipeline, electric, telephone and cable service required by the respective utilities prior to the commencement of construction. Documentation of all permits/approvals issued by private utilities pertaining to the development of the project shall be provided to the Board prior to any construction or Site disturbance.
- x. The Applicant has submitted to the Board and all other relevant public agencies for review and final acknowledgment of consistency with this Decision, all requests for approval, and upon receipt of all approvals, has provided to the Board copies of all necessary approvals from all local, state and federal agencies, departments and commissions pertaining to this Project.
- y. The final plans shall include the location and design, including materials to be used, of all retaining walls to be used within the Project.
- z. The final plans shall identify the location of all street lighting fixtures in accordance with the condition requiring compliance with the Town's code provisions concerning outdoor lighting.

CONDITIONS PRECEDENT TO MAKING APPLICATION FOR BUILDING PERMIT(S)

98. All conditions precedent to commencement of Project have been fulfilled as per this Decision and to the satisfaction of the Board.

99. The Applicant shall provide proof that the subdivision and lotting plans, as approved by the Board, have been recorded at the Nantucket County Registry of Deeds and three (3) copies of the final plan, exactly as it is recorded, shall be provided to the Board.

100. The Applicant shall enter into the standard MassHousing Limited Dividend Monitoring Agreement with MassHousing prior to receiving the initial building permit for the project. Compliance with the limited dividend requirements under G.L. c. 40B shall be determined by the Subsidizing Agency in accordance with the rules of the applicable housing subsidy program. All revenue and expenses attributable to upgrades and/or options purchased by home buyers must be included in the cost certification documents. Any rebates for materials/equipment/appliances must be included in the Cost Certification. The Board shall receive copies of any and all materials submitted to the Subsidizing Agency related to Cost Certification and Limited Dividend restriction monitoring and reviews.

101. No later than the submission of the initial building permit application, the Applicant shall submit, as applicable for the proposed project, for review and approval by the Board or its designated representative a copy of the proposed Homeowners Association Declaration of Trust, Homeowners Association Budget, and Declaration of Covenants, Restrictions and Easements as well as all Condominium Association documents, including but not limited to the Declaration of Trust, Master Deed, Rules and Regulations, and Condominium Budget. Said documents shall reference this Decision and the affordability requirements upon which the Comprehensive Permit is conditioned and state that the Project is subject to this Decision. The Homeowners Association and Condominium documents shall provide that the Homeowners Association and Condominium Trust are responsible for maintaining the roadways and sidewalks, storm water management system, common landscaping including all buffer areas, and fencing therein, all infrastructure and other common facilities including the Recreation and Maintenance Buildings, and shall also be responsible for snowplowing and trash removal. The Board acknowledges that the Subsidizing Agency has final approval authority in regard to the Homeowners Association and Condominium documents, including the respective budgets. These documents must include an explanation of how common costs (including the operation of the Recreation area) to be shared between the Homeowners Association and the Condominium Association shall be allocated between the two entities. Any applicable Homeowners Association or Condominium Fees shall be allocated to the Affordable Homes based upon a percentage of Fair Market Value. In determining the Chapter 40B allowable sales prices for the Affordable Units, a realistic Homeowners Association or Condominium fee must be used. If Affordable Unit owners will be responsible for the payment of any applicable sewer permitting fees, any such fees must be taken into consideration in determining the allowable sales prices for Affordable Units. Upon its formation, the Homeowners' Association and the Condominium Trust, as applicable, shall be initially endowed by the Applicant in the amount of Four Hundred Dollars (\$400) per unit.

There shall be no change in the By-laws of the Homeowners' Association or the Condominium Trust, as applicable, without the approval of 75% (as rounded below) of each of the two (2) income levels of the homeowners, as applicable and as illustrated below:

Single Family Units

Market Rate Units: 30 units*75% = 22.50 (Rounded to 22)

Affordable Units: 10 units*75% = 7.50 (Rounded to 8)

Duplex Units

Market Rate Units: $9 \text{ units} \times 75\% = 6.75$ (Rounded to 7)

Affordable Units: $3 \text{ units} \times 75\% = 2.25$ (Rounded to 2)

Multifamily Units (Fourplex Units)

Market Rate Units: $6 \text{ units} \times 75\% = 4.50$ (Rounded to 4)

Affordable Units: $2 \text{ units} \times 75\% = 1.50$ (Rounded to 2)

Owners may not vote changes inconsistent with the Comprehensive Permit and any conditions thereto, the approved Regulatory Agreement, and/or the Deed Rider.

The Applicant shall be responsible for completion and maintenance of all infrastructure and compliance with this Decision until all of the units in the development are constructed and sold. Thereafter, the Homeowners' Association and/or the Condominium Trust shall bear such responsibility. The Applicant may collect fees from homeowners, as appropriate and as required in the Homeowners' Association and/or the Condominium Trust documents, for the maintenance of the infrastructure and other customary Homeowners' Association and/or the Condominium Trust fees.

102. No later than the submission of the initial building permit application, the Applicant must also submit an engineered easement plan showing all easements along with a narrative explaining how all Units will be served by such easements.

103. Not later than the date on which the first request for a building permit is filed, and before any building permit is issued, the Applicant shall file with the Board and all other relevant public agencies for review and for consistency with this Decision:

A. A copy of the request for a building permit, along with the required Form J under the local subdivision regulations. The building permit application must include a complete set of engineering drawings, plans and specifications ("Complete Plans") for use by contractors, inspectors, permit compliance officers and purchasers of the proposed dwelling units. These drawings, plans and specifications shall be stamped by a registered architect or professional engineer, as appropriate, licensed in the Commonwealth of Massachusetts. The Board shall review the complete plans for conformance with this Decision. The Building Department shall not issue a building permit until receipt of the Board's report that the Complete Plans conform to this Decision. The Applicant must also submit prior to initiation of each proposed construction phase a Resident Safety Plan that documents the safety measures that the Applicant will undertake to protect the safety of residents occupying units prior to the completion of all construction. The Resident Safety Plan shall be reviewed and approved by the Board and must be updated as needed and as requested by the Board.

B. A copy of site layout plans and profiles shown at scales considered adequate for review purposes, of all private roads and parking areas. The Board shall review the layouts and profiles for conformance with this Decision. The Building

Department shall not issue a building permit until receipt of the Board's report that there is conformance with this Decision. Roadway layouts shall include properly labeled horizontal and vertical curves and stationing. The location of these facilities shall be as identified in the above-noted layout plans.

C. A copy of site layout plans, and final and detailed architectural drawings (including plans and elevations) shown at scales considered adequate for review purposes, of all structures containing dwelling units as approved by this Decision, including interior floor plans, current and finished elevations, construction type and exterior finishes to the detail required for use as on-site construction drawings and/or to obtain a building permit in accordance with the State Building Code, whichever requirement is more detailed ("Structure Plans"). The Board shall review the Structure Plans for conformance with this Decision and so notify the Building Department. The Building Department shall not issue a building permit until receipt of an affirmative report from the Board. Housing plans for dwelling units shall also be submitted to the Building Department in accordance with the State Building Code.

D. The final and detailed utilities plans and profiles including properly labeled drainage components and all site utilities including electric, gas, water supply lines, wastewater disposal connections and appurtenances and dwelling unit connections thereto indicating that all utilities servicing this project shall be underground within the Locus of the Project and to the detail required for use as on-site construction drawings and/or to obtain a building permit in accordance with the State Building Code, whichever requirement is more detailed.

E. Submit to the Board plans and elevations of all proposed signs, including the entranceway sign, sufficient to determine their compliance with applicable Town Code provisions, and the design, size and location of any entrance or roadway intersection lighting. No sign waivers shall be granted.

CONDITIONS PRECEDENT TO BUILDING CONSTRUCTION

104. During construction, the Applicant shall conform to all local, state, and federal laws regarding noise, vibration, dust and the blocking of any roads. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area, and shall take all necessary steps to prevent damage to or contamination of private wells during the course of construction and to prevent damage to any sewer infrastructure located within the Site. For this condition, construction activities shall include, but not be limited to: start-up of construction vehicles, equipment or machinery; fueling of construction vehicles, equipment or machinery; storage of construction vehicles, equipment or machinery on Site; delivery of building materials and supplies; removal of trees; grubbing; clearing; grading; filling; excavating; import or export of earth materials; installation of utilities both on and off the site; demolition of existing structures; removal of stumps and debris; and erection of new structures. The Applicant shall submit to the Board on a phase-by-phase basis as-built plans showing the buildings, roadways, sidewalks, driveway aprons, edge of pavement, and utilities. Said as-built

plans shall be submitted in a format satisfactory to the Building Inspector and be stamped by a licensed Massachusetts Professional Engineer. The Applicant shall also submit to the Zoning Board of Appeals digital copies of said as-built plans in a format acceptable to the Building Inspector.

105. Appropriate measures shall be taken during construction to prevent the tracking of material onto any public way. Any material tracked onto a public way shall be swept up and removed by the Applicant as necessary and as required by the Building Inspector.

106. The Applicant shall repair in a timely manner any damage to public roads adjacent to the Project that results from the construction and/or maintenance of the Project.

107. Parking for construction workers must be on-site and not on public ways. No construction vehicle parking shall be allowed on South Shore Road.

108. The Applicant shall implement dust control operations as necessary to comply at all times with applicable law, including without limitation MassDEP's Dust regulations at 310 CMR 7.09, as amended, as directed by the Building Inspector. Methods of controlling dust shall meet all applicable air pollutant standards as set forth by Federal and State regulatory agencies.

109. For each phase of the Project, prior to the start of construction of any building, roads to and within that phase of the Project which will have at least the first course of pavement, all hydrants in that phase of the Project will be operational, street signs will be in place and dwelling unit numbers will be provided at the building site to avoid conflict with building and lot numbers. Street names, house numbers, and building numbers for any fourplexes, shall be approved by the Nantucket Fire Department.

110. Prior to the commencement of any work at the Site, a split rail fence shall be installed to delineate the buffer zones and limit of work. An erosion control barrier, hay bales stacked end to end and siltation fence firmly anchored with six inches of soil, shall also be installed on the project side of the split rail fence. The erosion control barrier shall be inspected by the Board or its representative prior to work commencing on the site and shall be maintained until all disturbed areas have been stabilized to the satisfaction of the Board or its representative.

111. Limit of work construction fencing shall be installed in accordance with the final plan locations for the particular building lot.

CONDITIONS RELATING TO CONSTRUCTION

112. All dwelling units shall be built by the Applicant, and its agents or contractors over which it will exercise supervision and control and the acts of which it will be responsible, in accordance with this Permit and the Regulatory Agreement. No lots shall be sold to third-party builders. No vacant lots or lots containing partially completed buildings may be sold. No sales shall occur before issuance of certificate of occupancy. During construction, the name and mobile telephone number of the site manager or clerk of works employed by the Applicant shall

be filed with the Building Department, the Board, and the Nantucket Police Department, and such name and mobile telephone number shall be kept current.

113. At least forty-eight (48) hours prior to any initial site work, a pre-construction meeting shall be held with the Applicant, Applicant's contractor, a representative of the Board, its consulting engineer, and representatives of Town departments having a review interest in the plan. Said meeting shall be for the purpose of familiarization with the Project, the conditions of approval, and the Project's construction sequence and timetable.

114. Prior to commencement of construction of each applicable phase, the Applicant shall provide the Board: A) The name, address, email and business telephone number of the individual(s) responsible for all activities on site; B) A copy of a municipal lien certificate indicating that all taxes, assessments and charges due on the site have been paid; C) Proof that all required federal, state and local licenses and permits have been obtained.

115. During construction, the Applicant and its agents and employees shall conform to all local, state and federal laws regarding noise, vibration, dust and use of Town or County roads and utilities. The Applicant shall at all times use all reasonable means to minimize inconvenience to residents in the general area. Construction hours shall be limited Monday-Friday, 7:30 a.m. to 7:00 p.m.; Saturdays, 7:30 a.m. - 1:00 p.m. No construction or related activities on Sundays or legal holidays.

116. The Applicant shall submit to the Board, the Building Department and the Fire Chief, for review and final acknowledgment of consistency with this Decision, final and detailed scaled architectural drawings for all structures as approved by this Decision, including interior floor plans, current and finished elevations, construction type and exterior finishes to the detail required for use as on-site construction drawings and/or to obtain a building permit in accordance with the State Building Code, whichever requirement is more detailed.

117. Stormwater management systems shall meet the design and performance requirements of the MassDEP's Stormwater Management Policy and Handbook, as revised, including requirements concerning Zone II areas.

118. Roadway design plans and construction details (inclusive with the final plans) with respect to interior ways shall be provided for approval by the Board. Except as otherwise provided by this Decision, roadway design and construction standards shall conform to the requirements of the Nantucket Planning Board subdivision rules and regulations. All proposed roadway and utility construction, grading and appurtenant work shall be described in complete detail to readily enable peer review and construction. A note shall be placed on each pertinent sheet of the plans stating that the Project is the subject of a comprehensive permit under G.L. c.40B, §§22-23, that the roads and ways within the Project in some cases may and in other cases may not, conform to the standards and requirements of the Nantucket subdivision rules and regulations. Sidewalks shall be provided as per approved plans and shall conform to the requirements of the subdivision rules and regulations. Complete development roadway profiles shall be provided for existing centerline and sideline grades, and proposed centerline grade. On

street parking shall be prohibited, except in those areas shown on the Comprehensive Permit Plans. Signage prohibiting parking shall be installed and maintained as required by the Town.

119. All utilities shall be underground, and shall conform to the private utility company's requirements.

120. Proposed underground utilities shall be shown in cross-section on the way, utilities plan and construction details shall be provided.

121. Normal water service pressure within the Project shall be a minimum thirty-five (35) psi under all conditions except fire flow. Available service pressure under peak water demand and fire flow conditions, including existing demands on the service pressure, shall be demonstrated to the Board's satisfaction by hydraulic modeling as required by the Fire Chief.

122. Water system design and construction shall meet the requirements, standards and regulations of the Wannacomet Water Department and the Massachusetts Department of Environmental Protection's guidelines and policies for public water supplies. Water system design is also subject to the aforementioned conditions concerning water service.

123. All stumps, brush, and other debris resulting from any clearing or grading shall be removed from the Locus. No stumps or other debris shall be buried or burned on the Locus.

124. A written submission shall be submitted to the Board describing all easements and covenants affecting the use of the subject site, referring to such covenants and location of such easements on a site plan. The Applicant shall also submit to the Board any written or recorded instruments granting or agreeing to such easements and covenants.

125. To ensure compliance with the terms and conditions of this Decision and any approval or order by any federal or state agency, the Applicant shall, no less than thirty (30) days prior to the request for a certificate of occupancies for any of the structures approved by this Decision, submit to the Board complete and detailed "As-Built Plans" of the roadway and associated infrastructure, as set forth in the Nantucket Planning Board subdivision rules and regulations and approved by the Board's consulting engineer together with a certification from a professional engineer or architect registered in the Commonwealth of Massachusetts that the Project's "As-Built Plan" complies in all substantive respects with this Decision and any other approval or order by any federal, state or local agency. Progress as-built plans may be submitted for the extent of roadway and associated infrastructure serving those dwellings for which certificates of occupancy are sought.

126. Temporary certificates of occupancy will not be permitted. The Fire Department will not sign the occupancy permit until all required fire prevention and detection systems are installed and operating, carbon monoxide detectors are installed and operating, street signs and house numbers are in place and all required inspections have been completed by the Fire Department.

127. Applicant must comply with all Zone II water protection requirements under the Town's Zoning Bylaw in addition to MassDEP regulations and requirements.

ADMINISTRATIVE

128. Within fourteen (14) days of receipt of a statement of costs incurred by the Town prior to the date of this Decision in connection with reviewing the application for a permit, the Applicant shall submit a certified check made payable to the Town of Nantucket in an amount to compensate the Town for such costs.

129. The Applicant shall pay the expenses incurred by the Board and Town in evaluating the plans required by this Decision and in monitoring and evaluating construction for this Project. These expenses shall be deducted from the special account established by the Town Treasurer for the Applicant. Prior to any clearing, grading or construction, the Applicant must pay to the Town, by certified check, \$30,000 as an advance deposit to cover at least a portion of these expenses. The Applicant will pay any additional costs to the Town as required. If at any time the amount of the advance deposit is reduced below \$5,000, Applicant, upon request, shall within five (5) business days pay to the Town an amount sufficient to increase the amount of the deposit to \$5,000, and if the Applicant fails to pay such amount within such period, all work on the Project shall cease until such amount has been paid. Any excess remaining at the completion of the Project will be returned to the Applicant.

130. Inspections and testing during the construction of ways and installation of utilities and the stormwater management system shall be conducted at the expense of the Applicant. The Board may appoint an agent to conduct such inspections.

131. The Applicant must post a performance guarantee for each phase of work to be undertaken, satisfactory and reviewed by the Board to be noted on the plan to ensure that any construction related damage to adjacent roads is repaired by the Applicant in a manner satisfactory to the Board. This performance guarantee is to be received by the Board prior to the commencement of any of the improvements approved in the plan and will be required until the Board decides that the Applicant has completed all of the improvements approved in the plan. The form of the performance guarantee, adequacy and/or amount may be varied from time to time by the Applicant subject to an agreement satisfactory to the Board and reviewed by the Board's counsel.

132. Recorded copies of all required legal documents (Homeowners Association documents, Statement of Conditions, Grant of Right of Enforcement, Grant of Easements for Utilities, Drainage, and Covenant) shall be presented to the Board prior to the release of the second lot from the Covenant and within six (6) months from the date of this decision (June 13, 2019).

133. The following aspects of the Project shall remain private and the Town and County of Nantucket shall not have any legal or financial responsibility for operation or maintenance of:

- a. Roadways, driveways or parking areas;
- b. Stormwater management systems and appurtenances;
- c. Snow plowing or removal;
- d. Landscaping;
- e. Trash disposal or pickup;
- f. Street lighting or other illumination;
- g. Maintenance requirements of easements, access and appurtenances associated with any of the above.

134. The water system shall be constructed by the Applicant and granted to the Town of Nantucket upon the Town's acceptance of the installed water main and appurtenances and all required testing results. Such acceptance shall not serve to constitute acceptance of the infrastructure contained in the preceding paragraph.

135. The Applicant shall be responsible for the installation, operation, and maintenance of all aspects of the Project, of all infrastructure and compliance with this Comprehensive Permit decision until all of the units in the development are constructed and sold. Thereafter, the Homeowners' Association and/or the Condominium Trust shall bear such responsibility. The Applicant may collect fees from homeowners, as appropriate and as defined in the Homeowners' Association and/or Condominium Trust documents for the maintenance of the infrastructure...

136. The Applicant shall complete construction within three (3) years from the date this Permit becomes final, unless such time shall be extended in writing by the Board for cause, not to be unreasonably withheld.

137. The fees for the engineering reviews and the Town's construction oversight shall be the obligation of the Applicant. Prior to the commencement of work by a particular consultant, the Applicant shall pay the estimated fees for the required work. No site disturbance or clearing shall commence until all past and estimated future fees are paid, including all fees owed the Board and the Town of Nantucket for peer review services completed pursuant to G.L. c.44, §53G.

138. The Applicant shall keep the site and the adjoining existing roadway area clean during construction. Upon completion of all work on the site and prior to As-Built approval, all debris and construction materials shall be removed and disposed of in accordance with state laws and regulations and the Board shall be notified in writing of the final disposition of the materials.

139. Construction, once commenced, shall progress through to completion as continuously and expeditiously as possible and in accordance with the construction sequence and timetable approved. No clear cutting of this Site is permitted. Only such clearing as necessary

to construct upon a particular lot, or section of Project infrastructure within the bounds thereof, is permitted, to occur contemporaneously with the construction. All other natural areas shall be maintained. A construction fence, restricting access to the Site from South Shore Road, shall be maintained at all times during the initial phase of construction. Once the first residential unit(s) are constructed and occupied, fencing shall be relocated as necessary to restrict access to areas subject to ongoing or future phases of construction.

140. Construction equipment shall not be parked or stored within one hundred (100) feet of any drainage channel, drainage inlet, or related area. Maintenance of construction equipment involving transfer of fluids and fuels shall be conducted in areas away from these areas. Contractor's on-site personnel shall immediately notify the Town of any hazardous material spill, regardless of size. Earth material stockpiles shall not be allowed adjacent to perimeter siltation barriers or drainage inlets or related areas. Long-term stockpiles over thirty (30) days shall be shaped, stabilized and circled by siltation fence and hay bales and shall be stabilized by temporary seeding, sheeting or netting.

141. Prior to beginning construction on any phase of the Project, the Applicant will submit to the Board for its approval a plan showing the location of all construction storage and stockpiling areas for that phase, together with details of the planned use of such areas.

142. All areas to be protected from encroachment from construction shall be marked on the ground as shown on the approved construction plans and these barriers shall be maintained by the Applicant throughout the construction phase of the Project. Prior to the initiation of each construction phase, Applicant shall provide for review and approval by the Building Inspector a proposed Safety Plan that documents how residents occupying units will be protected during the construction of future phases.

143. Excavation dewatering shall be in a workmanlike manner and such water shall be free of suspended solids before being discharged into a stormwater drainage system. This condition applies to all forms of dewatering including pumping and trenching.

CONDITIONS PRIOR TO ISSUANCE OF CERTIFICATE OF OCCUPANCY

144. The Applicant shall provide the Board with proof that an appropriate budget has been established and funded to maintain the systems, dwelling unit, ways and improvements in the Project consistent with that required by the subsidizing agency.

145. No building shall be occupied until the improvements specified in this Decision and set forth on the plans of records are constructed and installed so as to adequately serve said building or adequate security has been provided, acceptable to the Board, to ensure such completion. Any such performance guarantee shall be approved as to the amount and form by the Board.

146. The Applicant shall submit final architectural plans to the HDC Administrator, as the Board's designee, for review and approval whether the plans conform with the requirements of the Board's conditions concerning exterior architectural features and design.

147. Based upon the recommendations of the traffic consulting engineers during the course of the public hearing, concerning calculation of proportional traffic mitigation funds based upon the Project impact, the Applicant shall pay traffic mitigation funds to the Town in the amount of Two Hundred Thousand Dollars (\$200,000.00). Payment shall be made in full upon the issuance of the initial building permit.

148. The Applicant shall enter into the standard MassHousing Affordability Monitoring Agreement with MassHousing or with a monitoring agent approved by MassHousing prior to receiving the initial occupancy permit.

PERFORMANCE GUARANTEES

149. Prior to full surety release, satisfactory as-built plans shall be provided to the Board as required under the Nantucket Planning Board regulations.

150. All sureties shall contain the following provision: "The principal shall fully and satisfactorily observe and perform in accordance with the qualifications and time schedule set forth herein specified all the covenants, conditions, agreements, terms and provisions set forth in the Decision of the Nantucket Zoning Board of Appeals dated June 13, 2019."

151. No building shall be occupied until the building utilities specified in this Decision and set forth on the plans of record are constructed and installed and available so as to adequately serve said building or surety provided by the Applicant, in the amount and form approved by the Board.

152. In determining the amount of any surety, the Board shall be guided by the following formula in setting the sum of the security:

A. An estimate of the cost to complete the work that is satisfactory to the Board; plus

B. A 50% margin of error; plus an appropriate rate of inflation over a 5-year period.

153. This Decision shall not substitute for compliance with the Subdivision Control Law, G.L. c.41, §81-L (et seq.), regarding the division of land into two or more lots.

154. The Board shall maintain jurisdiction to ensure compliance with all state and local rules and regulations applicable to subdivisions and related construction, bonding/surety, and recording requirements.

VII. DECISION ON WAIVERS

The Applicant has requested certain waivers from various rules, regulations and bylaws lawfully adopted by the Town's regulatory agencies. The Board has endeavored to grant waivers

from those rules, regulations and bylaws only to the extent necessary to keep the Project from becoming uneconomic and so as, wherever possible, to minimize harm and disruption to the Locus and real property abutting the Locus. The Board's decision as to the waivers requested is found in Appendix C, attached hereto and incorporated by reference. To the extent a waiver has not been specifically granted with respect to any aspect of the Project, all other local requirements and regulations, as defined in 760 CMR 56.02, shall apply to the Project.

VIII. CONCLUSION

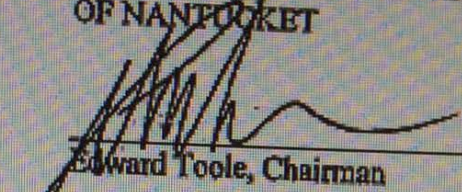
This Permit is granted with conditions, and was approved by the Nantucket Zoning Board of Appeals on a vote of 4-1 at a meeting of the Board on June 13, 2019. This Decision must be recorded at the Nantucket County Registry of Deeds.

Any person aggrieved by this Decision may file an appeal pursuant to the provisions of G.L. c.40A, §17. Such appeal must be filed within twenty (20) days of the filing of this Decision in the Office of the Town Clerk.

The Applicant has the right to appeal this Decision pursuant to the provisions of G.L. c.40B, §22. Copies of this Decision and notice thereof must be recorded by the Applicant at the Nantucket County Registry of Deeds and must bear the certification of the Town Clerk after twenty (20) days have elapsed and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied. A certified copy of said recording must thereafter be filed with the Zoning Board of Appeals.

THIS IS A SIGNED FINAL DECISION VOTED BY THE ZONING BOARD OF APPEALS.
SIGNATURES OF THE BOARD MEMBERS ARE ON THE FOLLOWING FINAL PAGE.

ZONING BOARD OF APPEALS OF THE TOWN
OF NANTUCKET


Edward Toole, Chairman


Susan McCarthy


Lisa Botticelli


Geoff Thayer

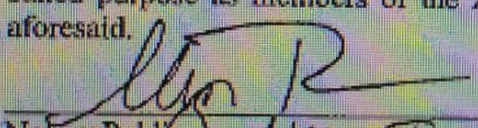
 (copied)
James Mondani

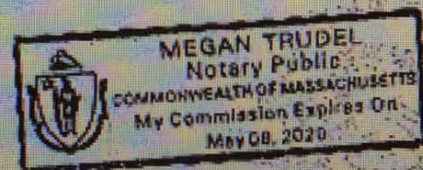
Dated: June 13, 2019

COMMONWEALTH OF MASSACHUSETTS

Nantucket, ss

On this 13th day of June 2019, before me, the undersigned Notary Public, personally appeared Edward Toole, Susan McCarthy, Lisa Botticelli, Geoff Thayer, and James Mondani proved to me through satisfactory evidence of identification, which was personal knowledge & driver's licenses to be the persons whose names are signed on the preceding or attachment document, and acknowledged to me that they signed it voluntarily for its stated purpose as members of the Zoning Board of Appeals of Nantucket, Massachusetts, as aforesaid.


Notary Public: Megan Trudel
My Commission Expires: May 8, 2020



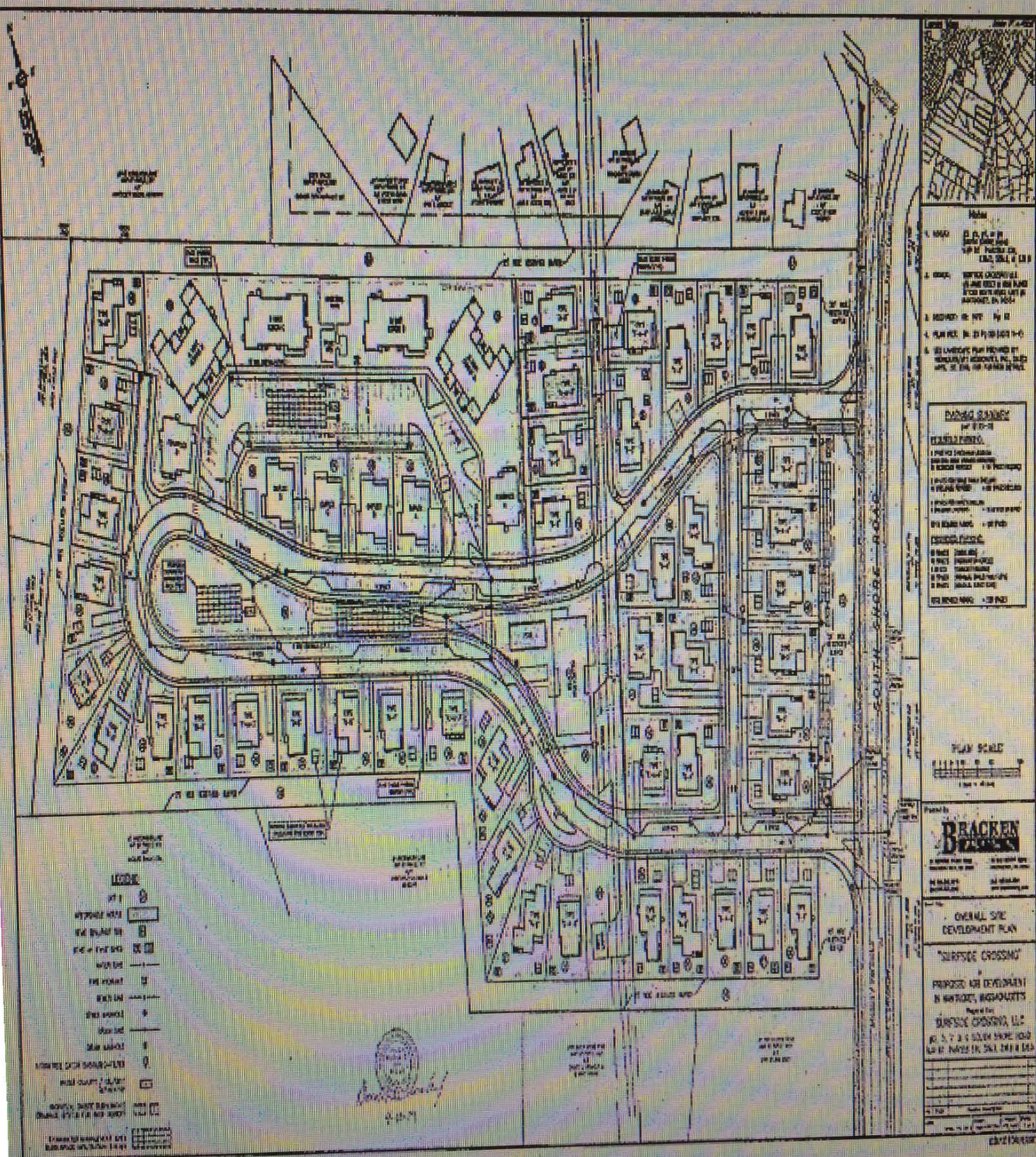
END OF DECISION

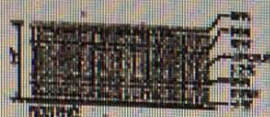
APPENDIX A

COMPREHENSIVE PERMIT PLANS

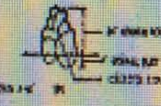
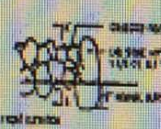
submitted for 92-unit project

- **Engineering**
- **Landscaping**
- **Architectural** *as conditioned by the Zoning Board of Appeals during deliberations*





FENCE DETAILS



FARMER'S FIELD STONE WALL

PLANTING NOTES

1. **CONSIDER** ALL PLANTING AREAS AND LOCATIONS BEFORE BEGINNING CONSTRUCTION OF THE PROJECT. THE PLANTING AREAS SHOULD BE IDENTIFIED AND MARKED BEFORE THE CONSTRUCTION OF THE PROJECT. THE PLANTING AREAS SHOULD BE IDENTIFIED AND MARKED BEFORE THE CONSTRUCTION OF THE PROJECT.

2. **PLANTING** SHOULD BE DONE IN THE SPRING OR FALL. THE PLANTING SHOULD BE DONE IN THE SPRING OR FALL. THE PLANTING SHOULD BE DONE IN THE SPRING OR FALL.

3. **PLANTING** SHOULD BE DONE IN THE SPRING OR FALL. THE PLANTING SHOULD BE DONE IN THE SPRING OR FALL. THE PLANTING SHOULD BE DONE IN THE SPRING OR FALL.

4. **PLANTING** SHOULD BE DONE IN THE SPRING OR FALL. THE PLANTING SHOULD BE DONE IN THE SPRING OR FALL. THE PLANTING SHOULD BE DONE IN THE SPRING OR FALL.

5. **PLANTING** SHOULD BE DONE IN THE SPRING OR FALL. THE PLANTING SHOULD BE DONE IN THE SPRING OR FALL. THE PLANTING SHOULD BE DONE IN THE SPRING OR FALL.

6. **PLANTING** SHOULD BE DONE IN THE SPRING OR FALL. THE PLANTING SHOULD BE DONE IN THE SPRING OR FALL. THE PLANTING SHOULD BE DONE IN THE SPRING OR FALL.

7. **PLANTING** SHOULD BE DONE IN THE SPRING OR FALL. THE PLANTING SHOULD BE DONE IN THE SPRING OR FALL. THE PLANTING SHOULD BE DONE IN THE SPRING OR FALL.

8. **PLANTING** SHOULD BE DONE IN THE SPRING OR FALL. THE PLANTING SHOULD BE DONE IN THE SPRING OR FALL. THE PLANTING SHOULD BE DONE IN THE SPRING OR FALL.

9. **PLANTING** SHOULD BE DONE IN THE SPRING OR FALL. THE PLANTING SHOULD BE DONE IN THE SPRING OR FALL. THE PLANTING SHOULD BE DONE IN THE SPRING OR FALL.

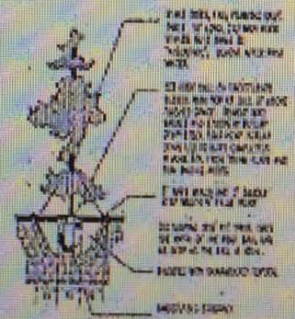
10. **PLANTING** SHOULD BE DONE IN THE SPRING OR FALL. THE PLANTING SHOULD BE DONE IN THE SPRING OR FALL. THE PLANTING SHOULD BE DONE IN THE SPRING OR FALL.

PLANT LIST

PLANT	COMMON NAME	RECOMMENDATION	COMMENTS
1. 1-2' 1/2"	Red Pine	Plant - 1/2"	
2. 1-2' 1/2"	Red Pine	Plant - 1/2"	
3. 1-2' 1/2"	Red Pine	Plant - 1/2"	
4. 1-2' 1/2"	Red Pine	Plant - 1/2"	
5. 1-2' 1/2"	Red Pine	Plant - 1/2"	
6. 1-2' 1/2"	Red Pine	Plant - 1/2"	
7. 1-2' 1/2"	Red Pine	Plant - 1/2"	
8. 1-2' 1/2"	Red Pine	Plant - 1/2"	
9. 1-2' 1/2"	Red Pine	Plant - 1/2"	
10. 1-2' 1/2"	Red Pine	Plant - 1/2"	



DECIDUOUS TREE PLANTING

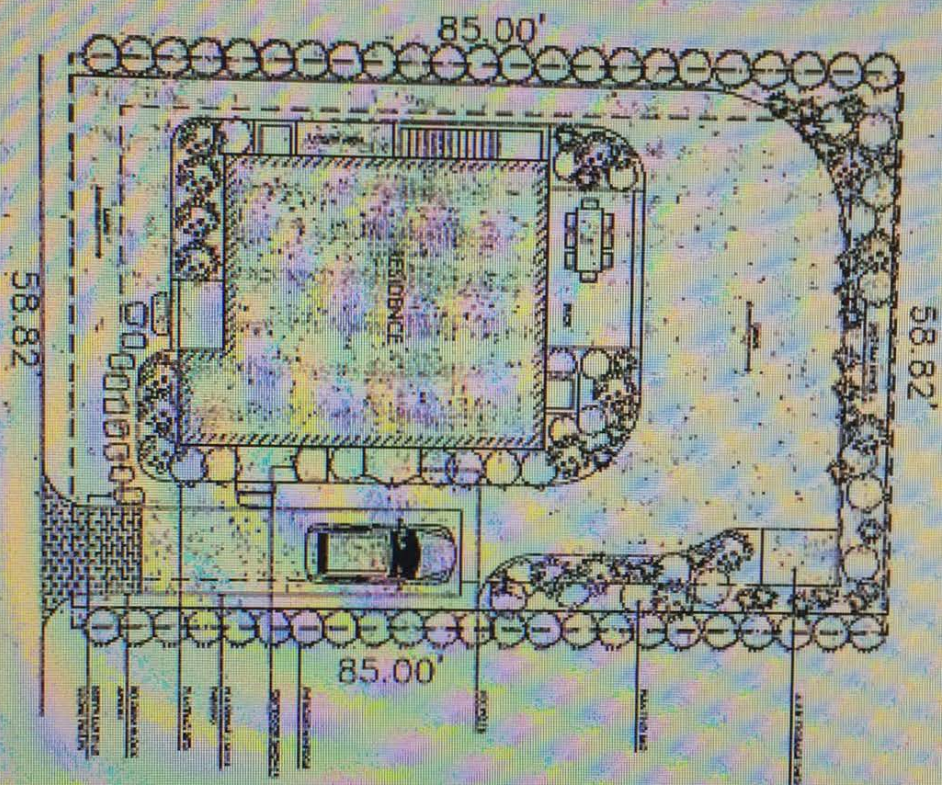


EVERGREEN TREE PLANTING

LANDSCAPE NOTES
Surface Crossing

L-3

CONCEPTUAL LANDSCAPE PLAN FOR INDIVIDUAL COTTAGE (2), Sheet 2 of 2



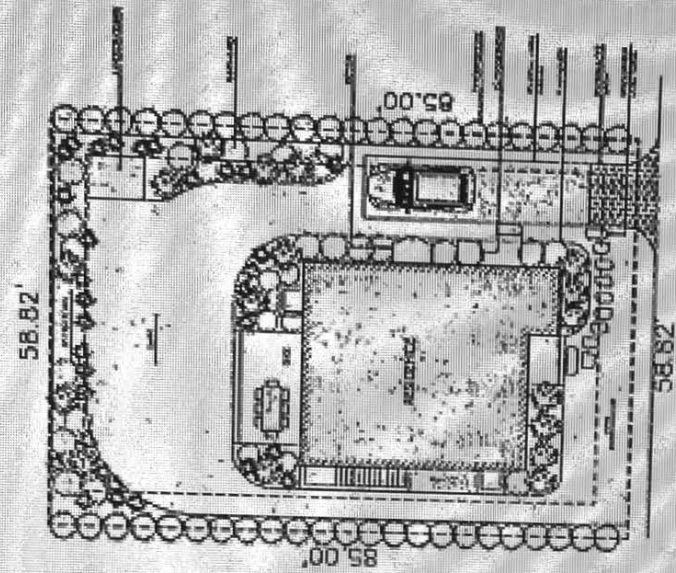
[Signature]

PROJECT
 ADDRESS
 CITY
 STATE
 ZIP
 PHONE
 FAX
 E-MAIL
 WEBSITE
 PROJECT NO.
 DATE

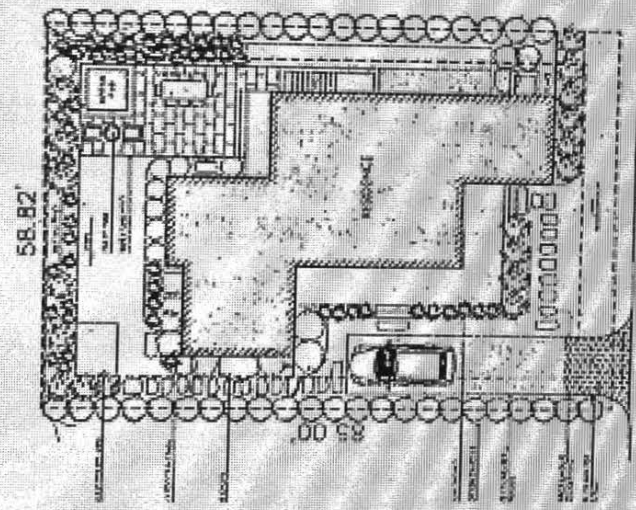
CONCEPTUAL
 LANDSCAPE PLANS
 FOR
 INDIVIDUAL AND OVERALL

SHEET NO.
 TOTAL SHEETS
 DATE
 DRAWN BY
 CHECKED BY
 PROJECT NO.

SHEET



CONCEPTUAL LANDSCAPE PLAN FOR INDIVIDUAL COTTAGE (2) 1/2" = 1'-0"



CONCEPTUAL LANDSCAPE PLAN FOR INDIVIDUAL COTTAGE (1) 1/2" = 1'-0"

PLANTING SPECIFICATIONS



PLANTING SPECIFICATIONS

TYPE A-4 & A-5 - A20

STILLWATER

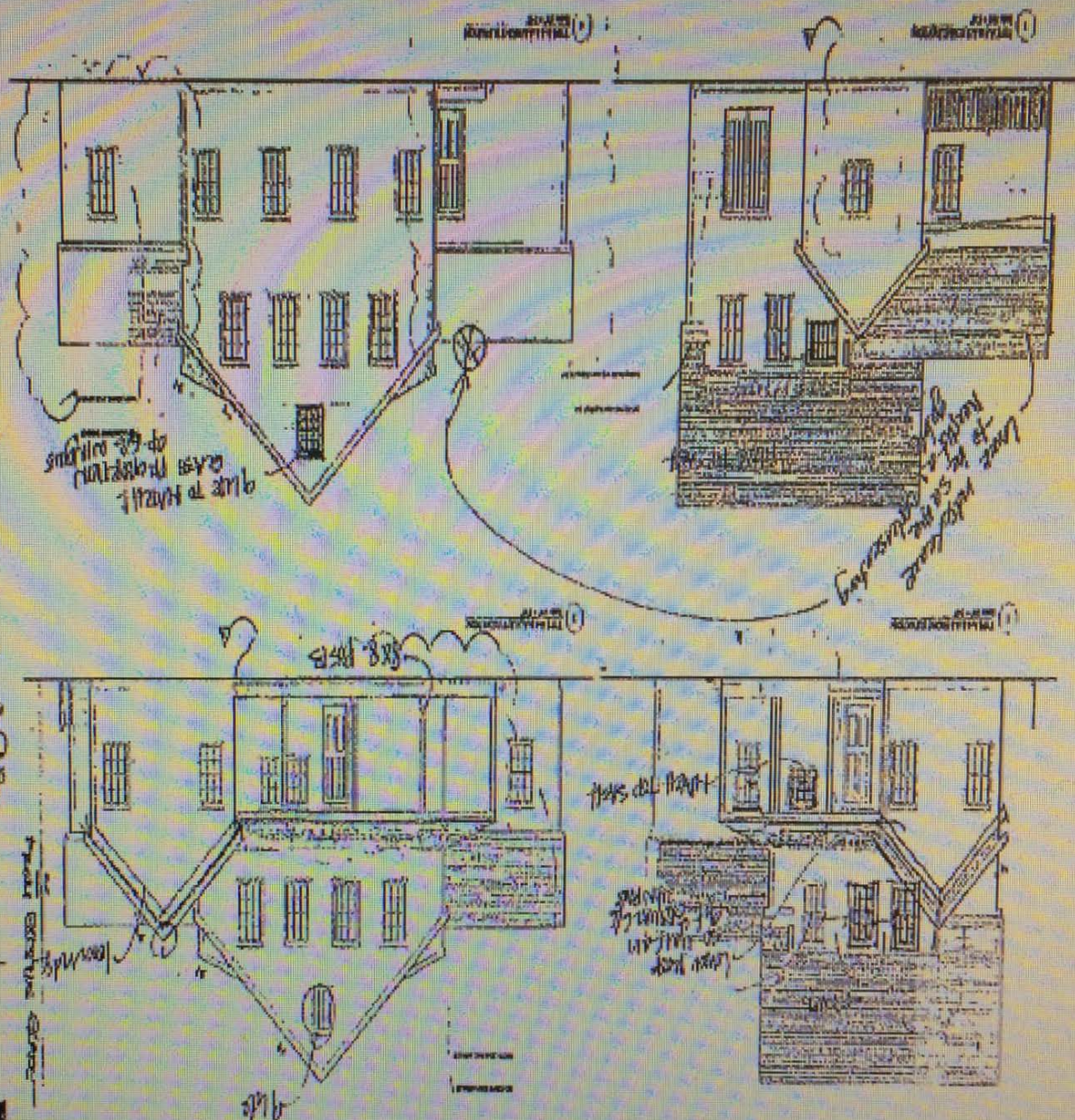
[illegible]

• Chlorine - the most widely used disinfectant
 • It is still used
 • But has many problems
 • All water plants use
 • All countries
 • All depends upon
 • But it is still used
 • SURFIDE - in these
 • CROSSING
 • The utility is concerned
 • May structure

10/12/2005 @
 10:12:25 AM @
 10/12/2005 @
 10:12:25 AM @

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MAY 1953





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F 508 548 1000

70 New St.
Boston, MA 02114
P 617 338 0000
F 617 338 0000

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SURFIDE CROSSING

NANTUCKET, MA 02541

NOT ENTIRELY AS SHOWN

NO.	DATE	REVISION
1	1/1/94	ARCHITECTURAL ELEVATIONS
2	1/1/94	ARCHITECTURAL ELEVATIONS
3	1/1/94	ARCHITECTURAL ELEVATIONS
4	1/1/94	ARCHITECTURAL ELEVATIONS
5	1/1/94	ARCHITECTURAL ELEVATIONS

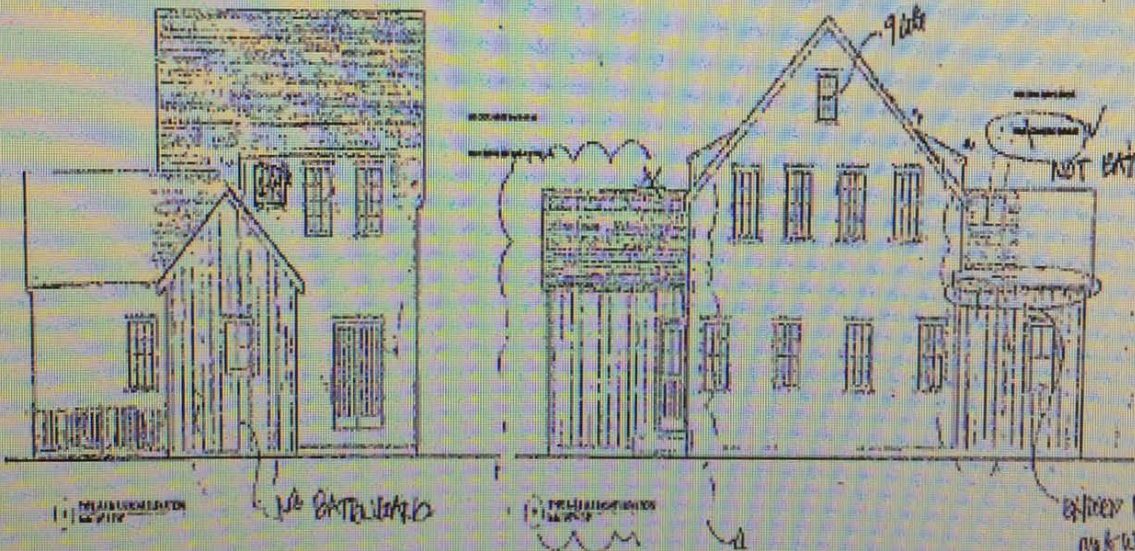
SCALE

THICK LINES
FROM
A-4 & A-5

ENTIRE ELEVATIONS
NOT SHOWN WITH
ENTIRE ELEVATIONS

ALTERNATE ELEVATIONS

TYPE A-4 & A-5 - A-2.1





ARCHITECTURE

PLANNING

HISTORIC
PRESERVATION

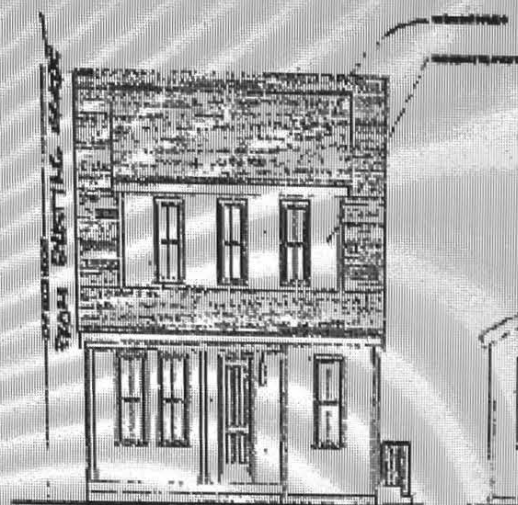
100 Canal Street
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P: 617 441 1001
F: 617 441 2200

PO Box 1720
Haverhill, MA 01821
P: 978 325-4111
F: 978 325-4120

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Design Architect
EMENTIS

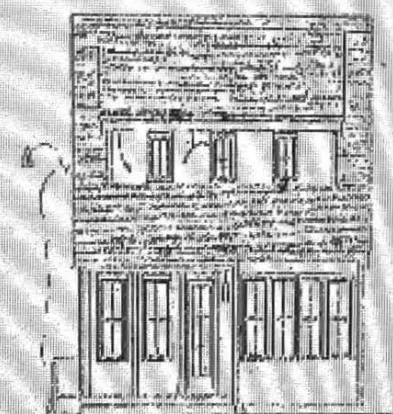
8 Willow Lane
Nantucket, MA 01954
P: 508-325-4355
F: 508-325-4360
www.ementisdevelopment.com



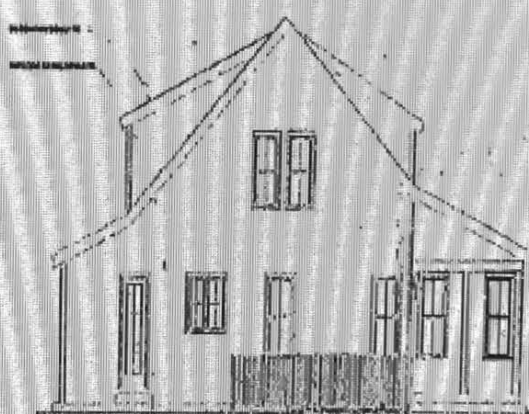
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1/4" = 1'-0"



TYPE B-5 BUILDING ELEVATION
1/4" = 1'-0"



TYPE B-4 BUILDING ELEVATION
1/4" = 1'-0"



TYPE B-5 BUILDING ELEVATION
1/4" = 1'-0"

SURFSIDE CROSSING

NANTUCKET, MA 01954

DATE: 01/11/2005
BY: EMENTIS ARCHITECTS
CHECKED: EMENTIS ARCHITECTS
DESIGN: EMENTIS ARCHITECTS
CLIENT: EMENTIS ARCHITECTS
PROJECT: SURFSIDE CROSSING

ALL WORK SHOWN
ON A-4 & A-5

ELEVATIONS
TYPE B-4 & B-5 - A2.0

오일시리즈

NAME	DATE	TIME
JOHN DOE	10/10/2023	10:00
JANE SMITH	10/10/2023	10:05
BOB JONES	10/10/2023	10:10
ALICE BROWN	10/10/2023	10:15
CHARLIE WHITE	10/10/2023	10:20
DAVID GREEN	10/10/2023	10:25
EVE BLACK	10/10/2023	10:30
FRANK GRAY	10/10/2023	10:35
GRACE HARRIS	10/10/2023	10:40
HELEN KING	10/10/2023	10:45
IRVING LYNN	10/10/2023	10:50
JACK MURPHY	10/10/2023	10:55
JILL NELSON	10/10/2023	11:00
JOHN PETERSON	10/10/2023	11:05
JANE ROSS	10/10/2023	11:10
JOHN TAYLOR	10/10/2023	11:15
JANE WALKER	10/10/2023	11:20
JOHN YOUNG	10/10/2023	11:25
JANE ZIMMERMAN	10/10/2023	11:30

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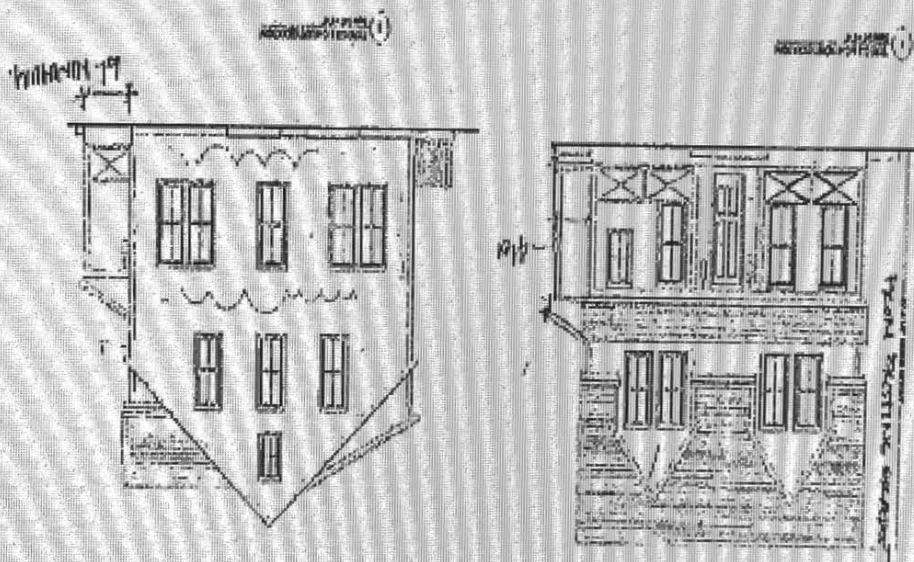
**THE NEW YORK PUBLIC LIBRARY
ASTOR LENOX TILDEN FOUNDATIONS
500 FIFTH AVENUE
NEW YORK**

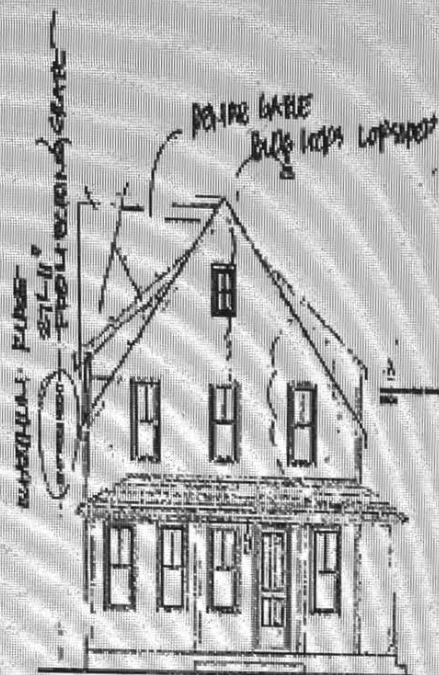
ATTENTION

541117

2001/24/839Y

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TYPE D-4 & D-5 FRONT ELEVATION
1/1/2008



TYPE D-4 & D-5 FRONT ELEVATION
1/1/2008

6th WILMOUTH
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F: 508-325-4180

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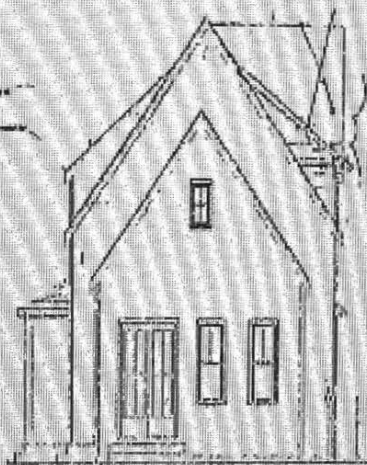
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NANTUCKET, MA 02554

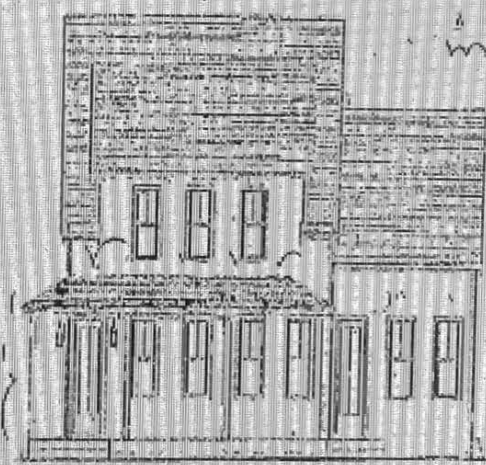
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3	003	10/20/07	Final Design
4	004	10/20/07	Final Design

1/1/2008

1/1/2008



TYPE D-4 & D-5 FRONT ELEVATION
1/1/2008



TYPE D-4 & D-5 FRONT ELEVATION
1/1/2008

ELEVATIONS
TYPE D-4 & D-5 - A2.0



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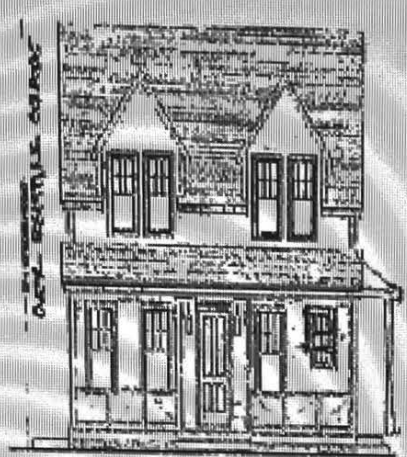
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NANTUCKET, MA 02554

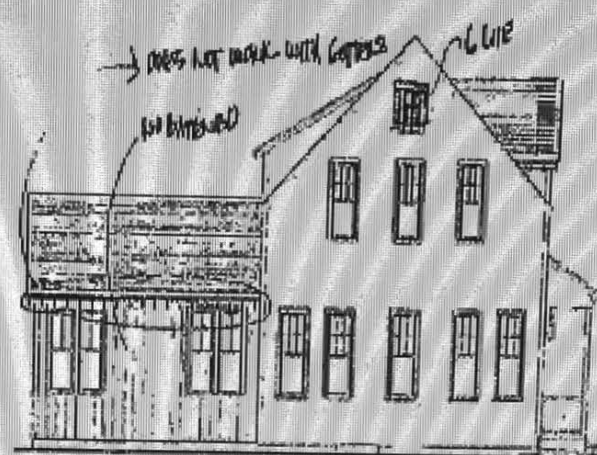
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5	05/01/04	REVISED DESIGN
6	06/01/04	REVISED DESIGN
7	07/01/04	REVISED DESIGN
8	08/01/04	REVISED DESIGN
9	09/01/04	REVISED DESIGN
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11	11/01/04	REVISED DESIGN
12	12/01/04	REVISED DESIGN

NO TYPICAL NOTES

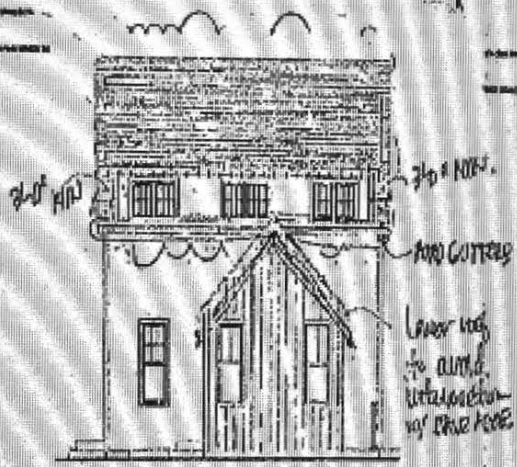
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TYPE E-4 & E-5 - A2.0



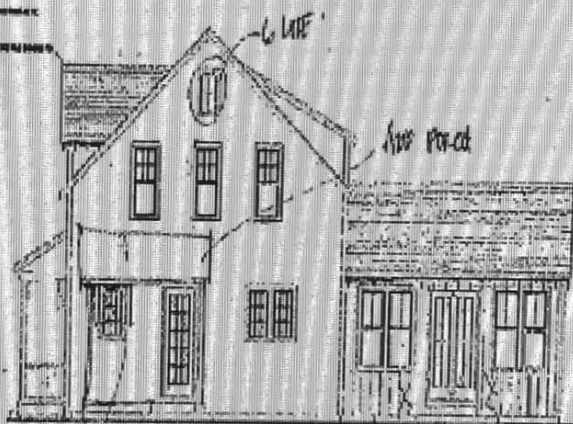
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(2) ELEVATION

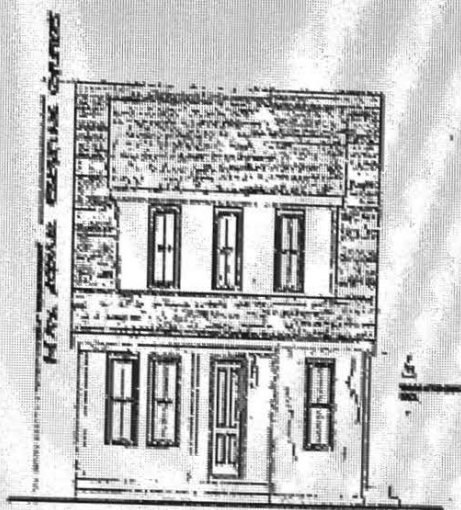


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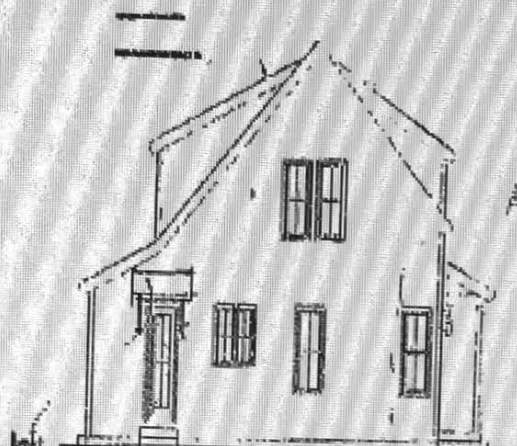


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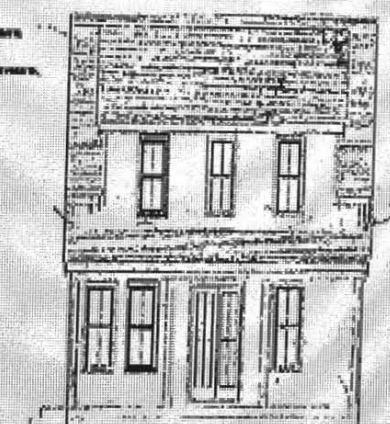
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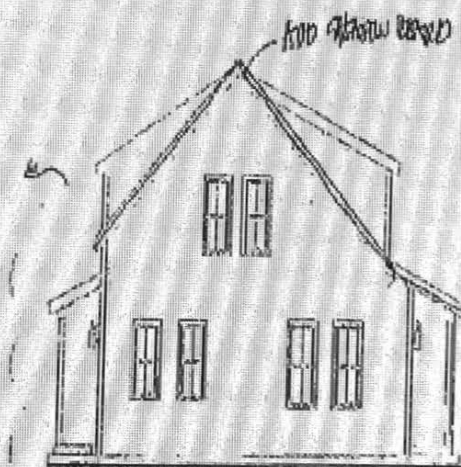
TYPE F-A-3 & F-A-4 - A2.0



TYPE F-A-3 & F-A-4 - A2.0



TYPE F-A-3 & F-A-4 - A2.0



TYPE F-A-3 & F-A-4 - A2.0

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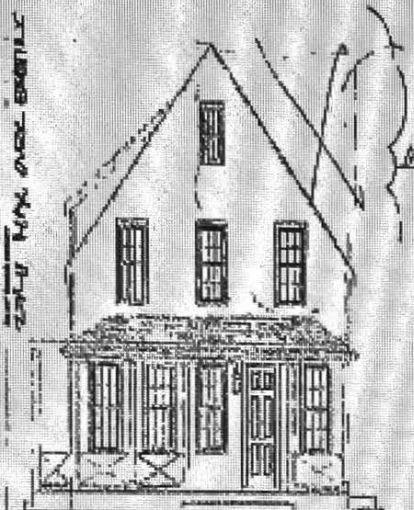
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B	01/01/01	ISSUED FOR PERMITTING
C	01/01/01	ISSUED FOR PERMITTING
D	01/01/01	ISSUED FOR PERMITTING

NOTES

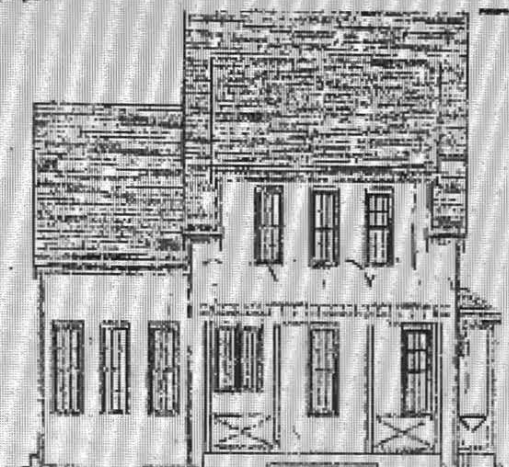
ELEVATIONS
TYPE F-A-3 & F-A-4 - A2.0

2000 STUDIOS - 2000 N. 1st St.



1) TYPE G-A-3 ELEVATION
12-01-10

Feature Group



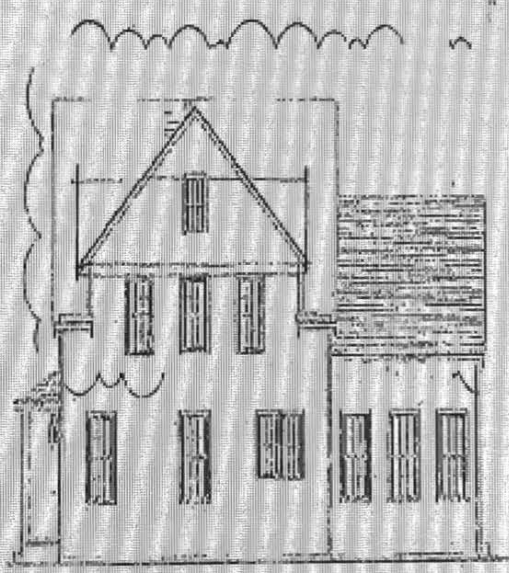
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12-01-10

6/10/10
10/1/05



3) TYPE G-A-3 ELEVATION
12-01-10

10/1/05



4) TYPE G-A-4 ELEVATION
12-01-10

10/1/05



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F: 508-225-0344

info@designassociates.com

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3	02/01/10	ISSUED FOR PERMITTING
4	02/01/10	ISSUED FOR PERMITTING

File No.

for TYPICAL NOTES

ELEVATIONS

TYPE G-A-3 & G-A-4 - A2.0



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INTERIOR DESIGN

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1 FRONT ELEVATION
Scale 1/8" = 1'-0"

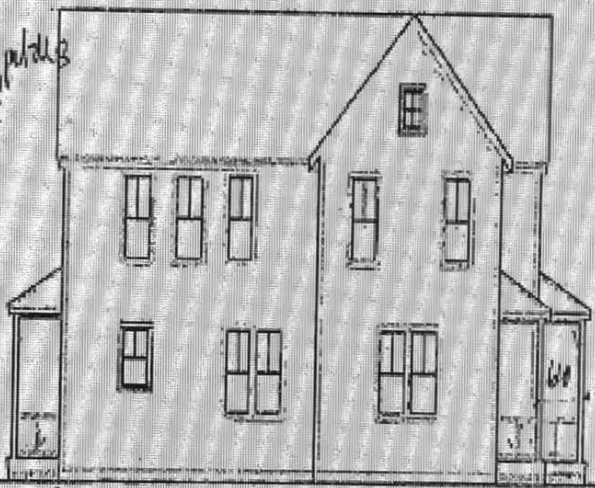


2 LEFT ELEVATION
Scale 1/8" = 1'-0"

2nd floor



3 REAR ELEVATION
Scale 1/8" = 1'-0"



4 RIGHT ELEVATION
Scale 1/8" = 1'-0"

SURFSIDE CROSSING

NANTUCKET, MA

DATE	REVISION
11/11/11	FOR ZONING REVIEW

ELEVATIONS - DUPLEX

2nd & 1st DUPLEXES
ARE NEXT TO EACH OTHER
STRUCTURES TO BE
MODIFIED TO CREATE
A WIDER STREET SCENE.
- ADJACENT CAN USE WIDENING
OF STRUCTURES / WINDOWS TYPE
2. MATERIALS SAME AS THE 1ST UNIT

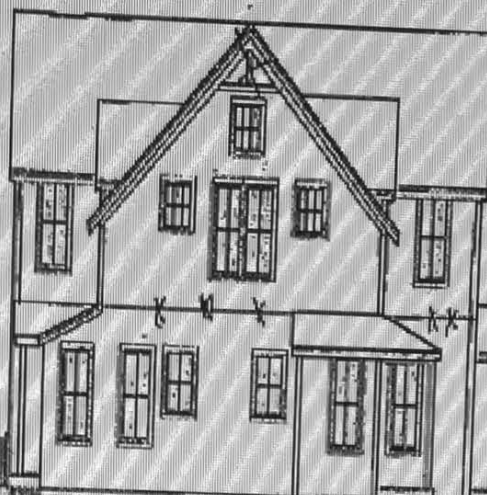
SEE TYPICALS
FOR LAYOUT
AND L.A.S
NOTES

ELEVATIONS

A3



1 FRONT ELEVATION
Scale 1/8" = 1'-0"



2 LEFT ELEVATION
Scale 1/8" = 1'-0"



3 REAR ELEVATION
Scale 1/8" = 1'-0"



4 RIGHT ELEVATION
Scale 1/8" = 1'-0"



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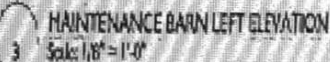
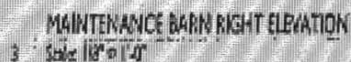
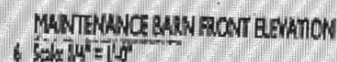
Plot Date

* TYPICAL NOTES
LISTED ON A-4 PAGE

FOURPLEX BUILDINGS A AND B

IF ALL FOUR PLEXES ARE
ADJACENT TO EXISTING
STRUCTURES TO BE MAINTAINED TO
CREATE A VALUED STREET SCENE
APPLICANT CAN USE ELEVATIONS OF STRUCTURE 3
FOR REFERENCE

3



DESIGN
ASSOCIATES
INC

ARCHITECTURE
PLANNING
HISTORIC
PRESENTATION

103 Cambridge Street
Cambridge MA 02141
Tel 617 661 9002
Fax 617 661 2158

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Marceline, MA 01454
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**SURFSIDE
CROSSING**

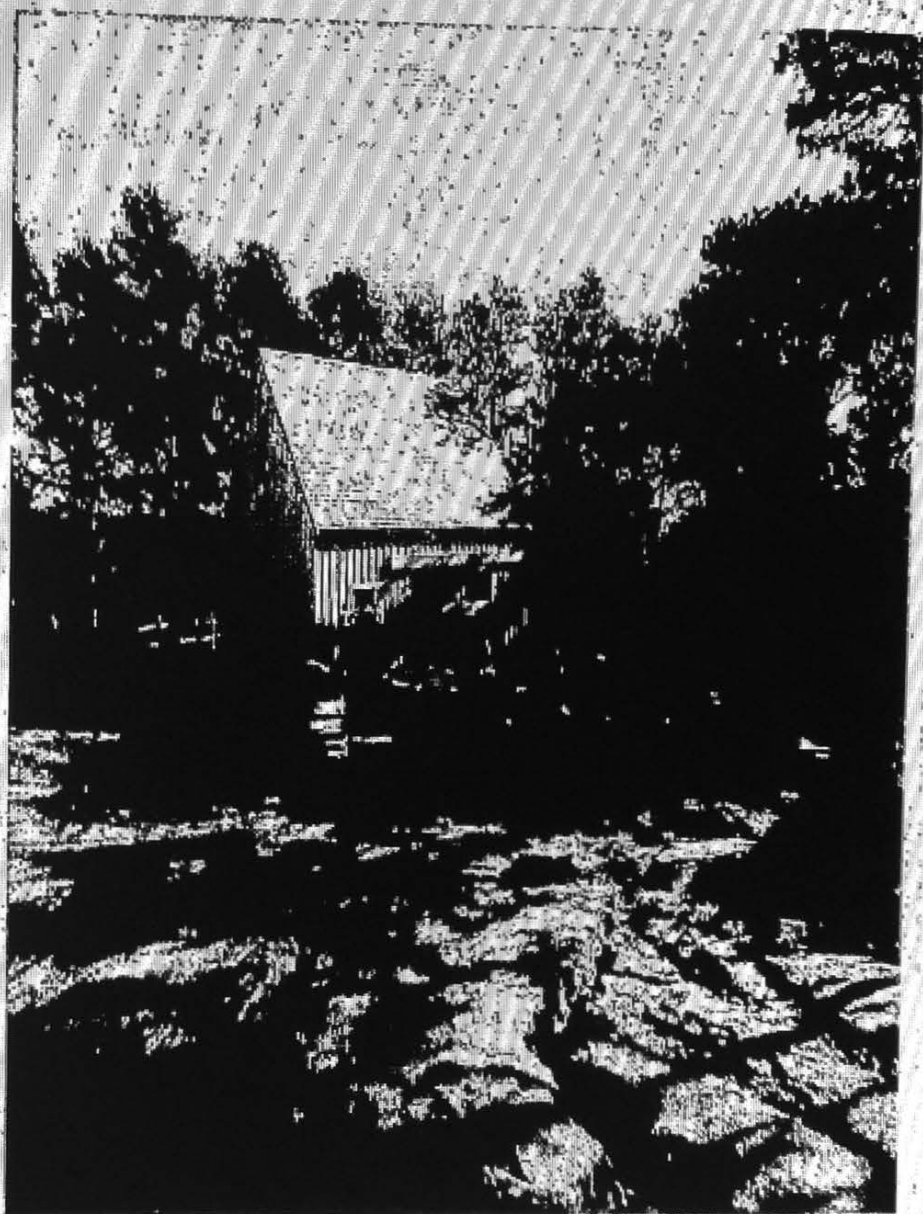
KNOWS HAVE APPROXIMATE
to 6/6 up to 1/1
NO OTHER PLACES KNOWN
- BUT ON 6/6 RAYS
AND CUTTERS 71
WINTER PLANTAGE 1971

DATE RECEIVED
4/1/88 FOR THE HARRIS

SEE ALL OTHER
TYPE AND NOTES
ON A-44-B-
A-44-B-1

MAINTENANCE BARN

A-1.1



APPENDIX B
MATERIALS ASSEMBLED AND SUBMITTED DURING PUBLIC HEARING

1. Initial Application for Comprehensive Permit, filed April 12, 2018
2. Minutes from Coordinated Review on May 3, 2018
3. *Revised* Comprehensive Permit Plans (Lotting, Site Development, Layout, Drainage, Grading, Utility); prepared by Bracken Engineering, Inc., June 11, 2018
4. *Revised* Comprehensive Permit Plans – for 100 units; prepared by Bracken Engineering, Inc. October 24-25, 2018, November 21, 2018, & March 19, 2019
5. *Revised* Building / Architectural Plans – for 100 units; prepared by Design Associates, Inc.
6. Landscaping Plans; prepared by Ahern Landscape Design Studio, June 11, 2018
7. Lighting Plan; prepared by Light Insight Design Studio, submitted July 2018
8. Phasing Plans; prepared by Bracken Engineering, Inc., October 25, 2018
9. Hydrant Location plan; prepared by Bracken Engineering, Inc., November 21, 2018
10. Sewer System Description with two plan sheets; prepared by Bracken Engineering, Inc., December 10 & 12, 2018
11. Stormwater Report; prepared by Bracken Engineering, Inc., *revised* March 19, 2019
12. **VARIOUS** concept building, sketch site plans, and matrix / schedule charts prepared for discussion at multiple meetings by Design Associates, Inc. & Weinmayr / Jay Associates Inc. Landscape Architects – for 100 unit & 88 unit project
13. Waiver request chart, *revised* June 13, 2018
14. Waiver Comparison Worksheet for PH on October 30, 2018
15. Waiver Comparison Worksheet *revised* for PH on December 18, 2018
16. Waiver Request Chart, *revised* April 9, 2019 for final PH on April 11, 2019
17. Opinion re. Proposed Condominium Restrictions; Memo prepared by Krokidas & Bluestein on behalf of Surfside Crossing, LLC, March 21, 2019
18. **VARIOUS** PEER REVIEW AND INDEPENDENT STUDY REPORTS & LETTERS submitted by consultants to ZBA and Select Board from Halcy & Ward, Inc. (water); Weston & Sampson, Inc. (Wastewater / Sewer); Chessia Consulting, Inc. (engineering/SPR); Tetra Tech (traffic); BETA Group (traffic); Avalon Consulting Group (endangered species/ environmental issues); Bristol Engineering Advisors, Inc. (Hydrogeologic Assessment/water quality)
19. **VARIOUS** Comment Letters submitted by Town Departments, Boards, Commissions

APPENDIX B
MATERIALS ASSEMBLED AND SUBMITTED DURING PUBLIC HEARING

20. **VARIOUS** Bracken responses to John Chessia's Report and recommendations
21. **VARIOUS** Letters & Memos from Surfside Crossing, LLC Proponents and Attorneys
22. **VARIOUS** PowerPoint Presentations prepared by Surfside Crossing, LLC team
23. Traffic Impact Assessments; prepared by MDM Transportation Consultants, Inc., dated February 16, 2018 and updated July 12, 2018.
24. **VARIOUS** Traffic Impact materials and memos from MDM Transportation Consultants, Inc., on behalf of Surfside Crossing, LLC
25. **VARIOUS** Letters and Materials from LEC Environmental Consultants Inc. on behalf of Surfside Crossing, LLC re. endangered species
26. **VARIOUS** letters to/from MassHousing to/from Select Board and Surfside Crossing, LLC
27. Massachusetts Historical Commission Letters, February 2, 2018 & August 23, 2018
28. Archeological Survey & Management Report prepared for Surfside Crossing, LLC, by The Public Archaeology Laboratory, Inc., July 2018
29. **VARIOUS** Letters & Materials to/from Massachusetts Division of Fisheries & Wildlife
30. **VARIOUS** Letters & Materials submitted by residents and/or opponents to project
31. PowerPoint Presentation; prepared by John R. Coon, JD, PhD re. Water Quality and Quantity Concerns, on behalf of Nantucket Tipping Point, January 16, 2019
32. Memo from Stantec, sewer consultant for Surfside Crossing LLC, February 20, 2019
33. Revised Comprehensive Permit Plans (Lotting & Site Development) – for 92 units; prepared by Bracken Engineering, Inc. April 10, 2019 for final PH on April 11, 2019
34. Landscaping Plans (including Notes & Concepts) – for 92 units; prepared by Weinmayr / Jay Associates Inc. Landscape Architects, April 10, 2019 for final PH on April 11, 2019
35. Architectural Plans & Matrices – for 92 units; prepared by Design Associates, Inc., April 11, 2019 for final PH on April 11, 2019
36. Narrative Conceptual Description of Allocation of Common Charges to Each Housing Unit (for 100 units) for final PH on April 11, 2019
37. Executive Office of Energy and Environmental Affairs – Department of Fish and Game; Recommended Final Decision re. NHESP File No. 12-31035 (Take Determination for Surfside Crossing), April 24, 2019
38. Letter from Chief of Nantucket Fire Department, May 13, 2019

APPENDIX C **DECISION ON WAIVER REQUESTS**

Zoning By-Law	Waiver Requested for 92 Unit Modification	Decision
<p>Section 139-7. Use Chart; prohibited uses in all districts Section A Use chart Section B-(1) Prohibits more than two dwelling units per lot.</p> <p>Section 139-2. Definitions</p>	<p>Waiver requested, as necessary to allow for multi-unit residential condominiums, and a maintenance building for storage of homeowner association vehicles, equipment, and the like, and a waiver of §139-2. Definitions section of the by-law, to the extent said definitions are applicable to, and/or act to impose requirements upon such uses.</p>	<p>Granted, in part, to allow for duplex and fourplex and maintenance buildings only as specified in the Conditions of the Comprehensive Permit Decision, otherwise denied.</p>
<p>Section 139-16, Intensity Regulations</p> <p>LUG-2 requirements:</p> <ul style="list-style-type: none"> • Min. Lot Size: 80,000 sf • Frontage: 150' • Front yard: 35' • Side/Rear yard: 15' • Ground Cover Ratio: 4% 	<p>Allow minimum lot size of 5,000 square feet.</p> <p>Allow frontage of less than 50 ft. on six lots; remainder of lots to have at least 50 ft. of frontage</p> <p>Allow 5 ft. front yard setback</p> <p>Allow side/rear yard setbacks 5 ft.</p> <p>Allow ground cover ratio of 35% on duplex lots; all other lots ground cover ratio of 30%</p>	<p>Granted, in part, only as specified in the Conditions of the Comprehensive Permit Decision, otherwise denied.</p>
<p>Section 139-19 B. (1) & D. Screening of Parking</p> <p>Parking areas of 20 cars or more require a 10' planting strip buffer.</p> <p>Relief through issuance of special permit.</p>	<p>Waive requirement, as applicable to condominium lot, for 10-foot-wide planting strip with at least one tree per parking space in parking lot with 20 or more spaces.</p>	<p>Denied.</p>

Zoning By-Law	Waiver Requested for 92 Unit Modification	Decision
<p>Section 139-20.1</p> <p>B. Driveway access to be approved Nantucket Department of Public Works.</p> <p>B. (1) Not more than one driveway access allowed on a lot.</p> <p>B(2)(g) On-site turnaround required in LUG-2</p>	<p>Waive requirement for approval of driveway access by Nantucket Department of Public Works for each driveway.</p> <p>Waiver requested to allow more than one driveway access on Lots 11, 13, 14, and 15</p> <p>Waiver requested</p>	<p>Denied.</p> <p>Denied.</p> <p>Denied.</p>
<p>Section 139-23. Site plan review (SPR)</p>	<p>Waiver from any requirements of this section.</p>	<p>Granted.</p>
<p>Section 139-26 Issuance of building and use permits.</p> <p>C (1). Certificate of appropriateness issued by the Nantucket Historic District Commission (HDC) required as part of the building permit application.</p> <p>I. No building permit shall be issued until fees are paid.</p>	<p>Waive requirement for Certificate of Appropriateness from Historic District Commission (HDC) for submission of building permit application.</p> <p>Waive building permit application fees for affordable units.</p>	<p>Granted only as to the Certificate of Appropriateness requirement; otherwise denied.</p> <p>Denied.</p>

Zoning By-Law	Waiver Requested for 92 Unit Modification	Decision
Section 139-28. Occupancy permits B. (2) Written certification required by the Nantucket Historic District Commission.	Waive requirement for certificate from HDC.	Denied. Applicant required to obtain written certification by Board, acting as the HDC.

Town of Nantucket, Comprehensive Permit Chapter 40B Regulations

Regulation	Waiver Requested for 92 Unit Modification	Decision
Section 3.01(i) States that applicant shall submit any and all copies of materials/applications filed with subsidizing agency – the application contains proforma, and pursuant to 760 CMR 56.05 (6) Board may request to review the pro forma or other financial statements for a Project only after "certain preconditions have been met."	To the extent that such preconditions have not been met, to the extent legally necessary, a waiver is requested.	Denied.

MISCELLANEOUS WAIVERS

Regulation	Waiver Requested for 92 Unit Modification	Decision
Nantucket Historic District Commission (HDC)	Applicant requests a waiver from the applicability of the Nantucket Historic District Commission requirements, including the requirement of obtaining a Certificate of Appropriateness from the HDC	Granted as to Certificate of Appropriateness
	Applicant further requests all permits or approvals relating to Signs, Satellite Dishes and Rooflines as set forth in Nantucket Code Chapter 124 which are under the jurisdiction of the HDC, be issued by the ZBA as part of the Comprehensive Permit process	Granted, in part, as to HDC review, but denied as to the substantive requirements of Chapter 124.
Board of Water and Sewer Commissioners/ Water Department and Sewer Department	Applicant requests that any permits or approvals required to connect to the municipal sewer system and the municipal water system be granted by the Zoning Board of Appeals as part of the Comprehensive Permit, and that any requirements to apply to the Board of Water and Sewer Commissioners, the Water Department, and the Sewer Department (or any other board or commission related to the sewer or water system) be waived.	Granted, in part, only as specified in the Conditions of the Comprehensive Permit Decision.
Nantucket Code Chapter 132/ Trees and Shrubs	To the extent applicable, Applicant requests that any permits, approvals, or waivers arising thereunder be issued by the ZBA in connection with the Comprehensive Permit.	Granted, in part, as specified in the Conditions of the Comprehensive Permit Decision.

Regulation	Waiver Requested for 92 Unit Modification	Decision
Nantucket Code Chapter 102/Outdoor Lighting	Applicant intends to comply with same, but to the extent applicable, any waivers or permits arising thereunder be issued by the ZBA in connection with the Comprehensive Permit	Granted, in part, as to ZBA jurisdiction but Applicant must comply with Chapter 102.
Nantucket Code Chapter 127	To the extent that the construction of the Project may require issuance of a permit for opening of any public way, or any other matter requiring a permit under Nantucket Code Chapter 127, Applicant requests that the ZBA issue any such permit as part of the Comprehensive Permit	Granted.
Board of Health Regulation 50.01 Definitions	To the extent applicable, Applicant requests a waiver from the bedroom count provisions set forth in the definition of a "Bedroom"	Denied.

RULES AND REGULATIONS GOVERNING THE SUBDIVISION OF LAND

NANTUCKET ISLAND, MASSACHUSETTS

Subdivision control waivers (with reference to the applicable sections of the above):

Regulation	Waiver Requested	Decision
§2.06a(2) Submission requirements Requirement for street network plan showing adjacent streets and misc. information.	Waive street network plan	Denied.

Regulation	Waiver Requested for 92 Unit Modification	Decision
<p>§2.06a(3) Submission requirements</p> <p>Requirement for executed Form B application</p>	Waive Form B application	Denied.
<p>§2.06a(6) Submission requirements</p> <p>Filing fee required of \$50 plus \$0.50 per linear foot of proposed roads.</p>	Waive filing fee.	Denied.
<p>§2.06a(8) Submission requirements</p> <p>A covenant or bond is required in accordance with 2.06f – performance guarantee.</p>	Waive proposed covenant or bond.	Denied.
<p>§2.06a(11) Submission requirements</p> <p>A Site Analysis report and map are required for definitive plan submissions.</p>	Waive site analysis report and map.	Denied.
<p>§2.06b(4) Submission requirements</p> <p>Current zoning information required on each sheet</p>	Waive placement of zoning information on plan.	Denied.

Regulation	Waiver Requested for 92 Unit Modification	Decision
<p>§2.06b(14) Submission requirements</p> <p>A landscape plan showing (a) location, size, and species of all proposed landscape plantings and (b) location and size of existing trees to be preserved.</p>	<p>Waive location and size of trees to be preserved.</p>	<p>Denied.</p>
<p>§2.06b(23) Submission requirements</p> <p>Plans shall contain notes relative to lot area compliance under zoning.</p>	<p>Waive notes as to lot area requirements under zoning.</p>	<p>Denied.</p>
<p>§2.06e Submission requirements</p> <p>Stake and brush cut centerline of road and lot corners at the road for viewing.</p>	<p>Waive staking for viewing.</p>	<p>Denied.</p>
<p>§3.01 Zoning</p> <p>All lots shown on the plan shall comply with area, frontage and other requirements of the Nantucket Zoning By-Law.</p>	<p>Waive dimensional compliance with zoning by-law.</p>	<p>Granted, in part, but only to the extent allowed under the Conditions of the Comprehensive Permit Decision.</p>
<p>§3.02 Public Open Spaces</p> <p>The Board in some cases shall require a park or parks</p>	<p>Waive public open spaces.</p>	<p>Granted.</p>

Regulation	Waiver Requested for 92 Unit Modification	Decision
<p>§3.06 Protection of Natural Features</p> <p>Due regard shall be shown for natural features.</p>	<p>Waive protection of natural features to the extent necessary.</p>	<p>Denied.</p>
<p>§3.06 One Dwelling Per Lot</p> <p>Not more than one dwelling per lot without the consent of the Planning Board.</p>	<p>Waive limitation to one dwelling per lot for condominium lot, and duplex lots</p>	<p>Granted, in part, but only as allowed under the Conditions of the Comprehensive Permit Decision.</p>
<p>§3.10 Street System</p> <p>Shall conform to the Master Plan, continuous in alignment with existing streets, provisions for proper projection of streets and designed for convenient access for normal traffic and emergency vehicles.</p>	<p>Waive street system provisions.</p>	<p>Denied.</p>
<p>§4.02 Roadway Layout and Parcel Perimeter Monuments</p> <p>Concrete monuments shall be installed at roadway points and lot corners.</p>	<p>Waiver requested as to roadway points and parcel monumentation</p>	<p>Denied.</p>

Regulation	Waiver Requested for 92 Unit Modification	Decision
§4.03 Streets Secondary and minor street layouts shall be 40' wide.	Waive street width requirement to 30' for proposed minor roads	Denied.
§4.09 Shoulders 4' shoulders required from outside treated road surface.	Waive roadway shoulders. Proposed sidewalk is adjacent to road.	Denied.
§4.16 Landscaping Specifies landscape plan requirements.	Waive requirements of planting new trees.	Denied.
§4.18 Sidewalks Specifies sidewalks installed both sides of roadway	Waive requirements.	Granted; Sidewalks not required on both sides, but must be provided on one side as shown on Comprehensive Permit Plans
§4.19 Bicycle Paths Bicycle paths shall be required.	Waive provision of bicycle paths, as sidewalks proposed on one side of the road	Granted.
§4.20 Street Lights Street lights are required as designated by the Planning Board	Waive street lights.	Granted.

Regulation	Waiver Requested for 92 Unit Modification	Decision
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§4.20 Street Lights Street lights are required as designated by the Planning Board	Waive street lights.	Granted.